Petition

81-169

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No.

MARIANNE O'BRIEN REYNOLDS
Petitioner,

versus

STATE OF GEORGIA;
GEORGE BUSBEE, ETC., *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES A. GAMMON
1925 K Street, N.W.
Suite 300
Washington, D.C. 20006
(202) ~~293-7979~~ 861-0770

Of Counsel:

JAMES E. MEYERS
A. WRAY FITCH III
Gammon & Grange
1925 K Street, N.W.
Suite 300
Washington, D.C. 20006

QUESTION FOR REVIEW

Whether the federal district courts have jurisdiction of claims arising under Title 42 U.S.C. § 1983 when the unconstitutional acts occur *ab initio* in a state's supreme court.

LIST OF PARTIES TO THE PROCEEDING

Petitioner

MARIANNE O'BRIEN REYNOLDS

Respondents

STATE OF GEORGIA

GEORGE BUSBEE, individually and as Governor of Georgia

ARTHUR K. BOLTON, individually and as Attorney General of Georgia

JOE D. TANNER, individually and as Commissioner, Department of Natural Resources of Georgia

BOARD OF NATURAL RESOURCES OF GEORGIA

DOLAN E. BROWN, JR., J. LEONARD EUBANKS, ALTON T. DRAUGHON, LINDA S. BILLINGSLEY, MARY BAILY IZARD, MARVIN BILLUPS, JR., LLOYD L. SUMMER, JR., J. WIMBRIC WALKER, DONALD J. CARTER, WALTER W. EAVES, SAM COFER, WADE H. COLEMAN, JAMES HERB BUTLER, A. LEO LANMAN, JR., LEONARD E. FOOTE, all individually and as Members of the Board of Natural Resources of Georgia

STATE PROPERTIES COMMISSION,

G.W. HOGAN, individually and as Executive Director, State Properties Commission

GEORGE BUSBEE, BEN W. FORTSON, BEN JONES, WILLIAM M. NIXON and six citizens of the State of Georgia, JOHN DOE I THROUGH JOHN DOE VI, all individually and as Members of the State Properties Commission

INDEX

Page

OPINIONS BELOW 2

JURISDICTION 2

QUESTIONS PRESENTED i

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 2

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 9

CONCLUSION 18

CERTIFICATE OF SERVICE 19

INDEX OF APPENDICES 20

TABLE OF AUTHORITIES

Cases:

Atlantic Coast Line R.R. v. Phillips, 332 U.S. 168 (1947) 17

Bell v. Hood, 327 U.S. 678 (1946) 11, 13

Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971) 11

Bouie v. City of Columbia, 378 U.S. 347 (1964) 11

Brinkerhoff-Faris Trust and Savings Co. v. Hill, 281 U.S. 673 (1930) 11, 16

Chicago Burlington and Quincy R.R. v. Chicago, 166 U.S. 226 (1897) 12, 14

Cuyahoga River Power Company v. City of Akron,
240 U.S. 462 (1916) 14

Delmar Jockey Club v. Missouri,
210 U.S. 324 (1908) 17

Ex Parte Virginia, 100 U.S. 339 (1879) 11

Hughes v. Washington,
389 U.S. 290 (1967) 12, 17

Lynch v. Household Finance Corporation,
405 U.S. 538 (1972) 15, 17

Mitchum v. Foster,
407 U.S. 225 (1972) 11

Muhlker v. N.Y. and Harlem R.R.,
197 U.S. 544 (1905) 12

Pennsylvania Coal Company v. Mahon,
260 U.S. 393 (1922) 17

Reynolds v. Estate of Reynolds et al.,
238 Ga. 1, 230 SE 2d. 842 (1976) 5

Robinson v. Ariyoshi,
441 F. Supp. 559 (D. Haw. 1977) 13

Rooker v. Fidelity Trust Company,
261 U.S. 114 (1923) 12, 13

Rooker v. Fidelity Trust Company,
263 U.S. 413 (1923) 9, 12, 13

Saunders v. Shaw,
244 U.S. 317 (1917) 11, 16

Shelly v. Kraemer,
334 U.S. 1 (1948) 16

Sotamuro v. County of Hawaii,
402 F. Supp. 95 (D. Haw. 1975) 13

Stefanelli v. Minard,
342 U.S. 117 (1951) 10

United States v. Classic,
313 U.S. 299 (1941) 17

West v. Chesapeake and Potomac Telephone Company,
295 U.S. 662 (1935) 14

Constitution and Statutes:

CONSTITUTION OF THE UNITED STATES:

Amendment XIV, Section 1 17

UNITED STATES STATUTES:

28 U.S.C. § 1331 4

28 U.S.C. § 1343 ..... 4, 10

42 U.S.C. § 1983 ..... 4, 15, 17

GEORGIA STATUTES:

[Former] Ga. Code Ann § 1902 (Ga. Laws 1939,
p. 384 *et seq.*, repealed and superceded,
Ga. Laws 1962, p. 162 *et seq.*) 7

[Former] Ga. Code Ann § 22-1902 (Uniform
Stock Transfer Act, Section 1) 7

Ga. Code Ann. § 109A-8-301 (Uniform
Commercial Code § 8-301) 7, 16

IN THE

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No.

MARIANNE O'BRIEN REYNOLDS,
Petitioner,

versus

STATE OF GEORGIA;
GEORGE BUSBEE, ETC., *et al.*,
Respondents.

Petitioner, Marianne O'Brien Reynolds, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on March 26, 1981.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at *Reynolds v. State of Georgia, et al.*, 640 F.2d 702 (5th Cir. 1981). (Appendix I.)

JURISDICTIONAL STATEMENT

The order of judgment and opinion of the United States Court of Appeals for the Fifth Circuit were entered on March 26, 1981. The United States Court of Appeals for the Fifth Circuit subsequently issued an order on April 28, 1981, denying petitioner's timely petition for rehearing and suggestion for rehearing *en banc*, without opinion, and this petition is filed within ninety days of that date. Accordingly, this Court has jurisdiction to review the judgment in question by writ of certiorari under Title 28 of the United States Code, § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States:

Amendment V

> No person shall . . . be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1

> No State shall . . . deprive any person of life, lib-

erty, or property, without due process of law ... ... nor deny any person within its jurisdiction the equal protection of the laws.

United States Statutes:

28 U.S.C. § 1331(a)
The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

28 U.S.C. § 1343(3)(4)
The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

42 U.S.C. § 1983
Every person who, under color of any statute, ordinance, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This matter is before the Court to review the decision of the United States Court of Appeals for the Fifth Circuit affirming an order of the United States District Court for the Southern District of Georgia granting summary judgment for the respondents and dismissing petitioner's complaint for lack of jurisdiction. Petitioner invoked the district court's jurisdiction under 28 U.S.C. §§ 1331, 1343 and 42 U.S.C. 1983.

Petitioner commenced this action on November 2, 1978 in the district court seeking redress for violations of constitutional and civil rights in a taking of property[1] without just

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1. The petitioner, the second wife of the late tobacco heir R.J. Reynolds, Jr., has claim to 16,000 acres of Sapelo Island, Georgia, representing the assets of Sapeloe Plantation, Inc., and its successors in interest, by virtue of an instrument conveying title of the corporation's common stock to the petitioner. The instrument was executed and delivered to petitioner by Mr. Reynolds *circa* October 20, 1945. The stock so conveyed was represented by R.J. Reynolds to have been endorsed over to petitioner and held by him for her in a safe deposit box as a delivery of the certificates; and her ownership of the securities was confirmed by R.J. Reynolds' attorney.

On December 31, 1975, petitioner filed suit in the Superior Court of McIntosh County, Georgia, against, *inter alia*, the State of Georgia; the Sapelo Island Research Foundation, Inc. and its Trustees; other corporate entities; the Estate of Richard J. Reynolds, deceased; Annemarie S. Reynolds, individually and as executrix of the Estate; and other persons, to halt the transfer by the Sapelo Island Research Foundation to the State of Georgia of a substantial portion of Sapelo Island; to set aside

compensation and without due process of law by the action of the Supreme Court of Georgia and for the continuing violation by the officials of the state in asserting dominion and control over such property. Petitioner asserted in her complaint that in an arbitrary, unpredictable, and unprecedented decision, *Reynolds v. Estate of Reynolds et al.*, 238 Ga. 1, 230 SE 2d, 842 (1976) (Appendix VII), the Supreme Court of Georgia effected a violation of her federal statutory and constitutional rights in holding that petitioner had acquired no property rights in securities of a business corporation since the transfer of such securities had not been recorded on the transfer books of the corporation. No prior or existing statutory or case law, nor any custom or practice,

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previous transfers of portions of that island by various defendants and corporate entities controlled by them; and to have possession of the entire island and her ownership thereof affirmed; or alternatively, to receive damages from the defendants, an accounting and other ancillary relief to remedy an original and continuing fraud and violations of her ownership rights. At the time of the transfer of common stock to petitioner, Mr. Reynolds was married but seeking a divorce; petitioner was unmarried.

Numerous fraudulent and ineffective conveyances of the securities and the island by R.J. Reynolds and his co-conspirators (the defendants) and the subsequent acquisition by the State of Georgia, with notice of petitioner's interest, all in violation of the constructive trust arising from the fraud and breach of legal duties to her, were alleged in petitioner's multi-count complaint. The defendants moved for summary judgment, and both sides offered affidavits, deposition testimony, and numerous instruments. The trial court granted the motions, and petitioner Marianne Reynolds appealed to the Supreme Court of Georgia.

required such recording to create ownership rights; nor had the issue been before the Georgia Supreme Court.[2]

The Georgia Supreme Court held that because the property arrangements were made in consideration of a promise to marry when Mr. Reynolds was already married, the arrangement was against public policy, and the Court would therefore leave the parties and the property where it found them. The effect of that ruling was that Mrs. Reynolds would have an enforceable interest in any property which had already been transferred to her, but would not be able to enforce any promise to transfer property in the future. Thereupon, the Georgia Court created and resolved the crucial issue from which the petitioner's constitutional cause of action in the district court accrued: whether or not she had an ownership interest by reason of valid instrument of transfer and delivery of the certificates so that she was seeking enforcement of an existing interest rather than seeking enforcement of a promise to transfer property.

The Georgia Court held that as a matter of law, since the securities were not transferred into the petitioner's name on the books and stock transfer records of the corporation, petitioner had acquired no property interest in the securities and, in turn, had acquired no interest in the assets of the corporation. Thus, petitioner was held to have no property interest to assert. The rule of law, suddenly, unpredictably and without precedent, announced by the Georgia Supreme

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2. Upon denial of her Motion for Rehearing by the Georgia Court, petitioner timely sought direct review of the Georgia Court Judgment by this Court in *Reynolds v. Estate of Reynolds et al.*, No. 76-1156, by way of Petition of Writ of Certiorari filed February 27, 1977. Although on April 18, 1977 the Court denied the petition (Appendix VI), it was not presented with the question here of whether a United States District Court has jurisdiction under 28 U.S.C. §§ 1331, 1343 and 42 U.S.C. § 1983 to entertain violations of Constitutional rights and United States law by a state's highest judicial officers.

Court—that ownership rights could only be acquired by recording the transfer into the name of the transferee on the books of the corporation—was in direct contradiction to the Uniform Stock Transfer Act which was in effect at the time of the arrangements between petitioner and Mr. Reynolds. The rule was in direct conflict with the law of Georgia in effect at the time of the ruling by the Georgia Supreme Court, and it was totally unprecedented in Georgia law or any other state's law. The law in effect at that time, and generally in effect now, was that title to the stock certificates and the shares represented thereby could be transferred by *delivery* of the endorsed certificate or by *delivery* of the certificate and an instrument of transfer. No requirement existed that the stock of a corporation be transferred and re-registered in the name of the transferee on the books of the corporation in order to create an ownership interest in the transferee. *Uniform Stock Transfer Act*, Section 1, (former *Ga. Code Ann.* § 22-1902); *Uniform Commercial Code* § 8-301, *Ga. Code Ann.* § 109A-8-301. (Appendix VIII).

It is important to note that there was no dispute about transfer on the books; that issue was not briefed or addressed by the parties, not only because the law was well-settled, clear and not in issue on that point, but also because the disputed issue related to the delivery of the certificates. The sole basis of the Georgia Supreme Court's ruling necessarily relied upon the sudden and unprecedented change in law regarding what actions are required for a transfer of a property interest in shares of stock. Only by creating a new rule of law could the Georgia Supreme Court conclude, without the necessity of a remand to resolve factual issues, that the petitioner had no property interest.

The essence of the complaint in the federal district court is whether the Georgia Court decision constituted such an unpredictable, unprecedented and capricious change of state law, arbitrarily applied to petitioner for the benefit of the

State of Georgia, so as to take, in violation of constitutional and civil rights, petitioner's property under color of law, without just compensation and without due process of law. Petitioner sought injunctive relief to halt the action of the state officials in asserting and continuing to assert dominion and control of the property for which she had not been compensated, and she sought damages for continued wrongful State ownership, and for wrongful acts by state officials. The principal defendants are the officials of the state of Georgia who, by reason of their direct participation in the transactions and their *ex-officio* positions on controlling agencies of the State, have acted and are now acting to deprive and threaten to deprive petitioner of her constitutional rights.

On February 14, 1980, United States District Court Judge Anthony A. Alaimo entered an order granting defendants' motion for summary judgment on the sole ground of lack of subject matter jurisdiction and entered judgment dismissing the plaintiff's claim with prejudice. (Appendix III). In its order the district court stated that for purposes of testing its jurisdiction, it accepted the petitioner's interpretation of the Georgia Supreme Court opinion as an unpredictable and unprecedented change of law and recognized that a state court judgment which violates settled legal principles may run afoul of the guarantees of the due process clause, especially where the judgment has the effect of taking property from a citizen and giving it to the state, as occurred in the instant case. However, the district court concluded that, notwithstanding such abridgement of constitutional guarantees by the judgment of the state's highest court, its jurisdiction is strictly original; hence the district court has no power to hear a claim based on action by a state's highest court in violating constitutional and civil rights. Petitioner appealed to the United States Court of Appeals for the Fifth Circuit.

Adopting and appending the district court's opinion to its

per curium memorandum decision, the court of appeals on March 26, 1981, affirmed the district court order with the additional comment that it found nothing new or novel in the Georgia Court opinion. (Appendix I, IV). On April 28, 1981, the court of appeals denied petitioner's timely filed Petition for Rehearing and Suggestion for Rehearing *En Banc*. (Appendix V).

The State of Georgia, through its officials, has completed its acquisition of the disputed portion of Sapelo Island without compensation to plaintiff in any amount, and the court of appeals decision, as it stands, forecloses any meaningful remedy allowing the petitioner to obtain redress from the State of Georgia's administrative and highest judicial officers.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

This petition presents the opportunity to this Court to reconcile its opinion in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) with the intended scope of the jurisdictional grant Congress conferred on the federal district courts under 28 U.S.C. § 1343 for 42 U.S.C. § 1983 actions. The opportunity presented here is unique, for the unconstitutional acts occurred *ab initio* in a state's highest court, leaving the petitioner with no alternative but to avail herself of the laws of the United States to restore and ensure her constitutional rights. Yet the lower federal courts, the only forum in which she could proceed to secure her rights, have refused thus far to assert their jurisdiction, perceiving that to do so would be an exercise of appelate review of a state court judgment.

I

The Court of Appeals' Refusal to Grant Jurisdiction Conflicts With Applicable Decisions of This Court and Forecloses the Redress of Constitutional Wrongs Available to All Persons Under § 1983.

Petitioner's claims are sufficient to state a claim for relief under 42 U.S.C. § 1983 and vest the federal district courts with subject matter jurisdiction pursuant to 28 U.S.C. § 1343.

Section 1983 protects persons from injury or deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States, when the injury or deprivation results from state action or persons acting under color of state law. There can be no doubt that the protections afforded under § 1983 are to be construed broadly and with flexibility to accommodate the appropriate balance between state action and the protections afforded individuals under the Constitution. *Stefanelli v. Minard*, 342 U.S. 117 (1951). In its grant to the district courts of original jurisdiction of civil actions arising under Title 42 U.S.C. § 1983, Congress implicitly recognized the extremely broad and flexible nature of the remedy:

> *[T]o redress the deprivation, under color of any State law,* ... custom or usage, *of any right secured by the Constitution of the United States* ...; [and] [t]o recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights .... [Emphasis added].

28 U.S.C. § 1343(3),(4).

This Court has recognized district court jurisdiction of claims arising under § 1983 for the unconstitutional actions by a state's judiciary. In holding that § 1983 was an express exception to the Anti-Injunction Act, 28 U.S.C. § 1738, this

Court in *Mitchum v. Foster*, 407 U.S. 225 (1972) defined the scope of § 1983 and its application to state judicial officers:

> [T]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, "*whether that action be* executive, legislative or *judicial*." [Emphasis added].

Id. at 242 (quoting *Ex Parte Virginia*, 100 U.S. 339, 346 (1879). Furthermore, the Supreme Court has consistently enunciated the strong policy that a meaningful judicial remedy must be available to redress deprivation of constitutional rights. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 91 S.Ct. 1999 (1971). *See also*, *Bell v. Hood*, 327 U.S. 678 (1945).

This Court has on numerous occasions aknowledged that actions by a state court adversely affecting a person's constitutional rights create a federal cause of acton. The act of the Georgia Supreme Court in spontaneously and arbitrarily announcing a new rule of law effecting a transfer of land to the State of Georgia and unconstitutionally denying the petitioner just compensation, is an example of the type of constitutional infringment presenting a federal question. In *Brinkerhoff Faris Trust and Savings Co. v. Hill*, 281 U.S. 673 (1930), the Supreme Court held that the decision of the Supreme Court of Missouri was a change of law that denied due process to a plaintiff, giving that party a constitutional claim. In *Bouie v. City of Columbia*, 378 U.S. 347 (1964), the Supreme Court held that a ruling of a state's highest court was so novel as to be "unforeseeable" and therefore deprived defendants of due process by application of the statute to them.

Further, in *Saunders v. Shaw*, 244 U.S. 317 (1917), the Supreme Court held a state supreme court judgment to be a denial of due process, where the appellant was "not bound to contemplate" the action by the state Supreme Court. *See*

also, Muhlker v. N.Y. and Harlem R.R., 197 U.S. 544 (1905), and *Chicago, Burlington & Quincy R.R. v. Chicago*, 166 U.S. 266 (1896).

This principle is best set out in Mr. Justice Stewart's concurring opinion in *Hughes v. Washington*, 289 U.S. 290 (1967):

> To the extent the decision [of a state's highest court] arguably conforms to reasonable expectations, we must of course accept it as conclusive. But to the extent it constitutes a sudden change in state law, unpredictable in terms of the relevant precedents, no such deference would be appropriate.... Whether the decision here worked an unpredictable change in state law thus inevitably *presents a federal question* for the determination of this Court. [Emphasis Added].

Id. at 296 to 297.

The court of appeals, in the case at issue, has similarly acknowledged "that a State Court Judgment which violates settled legal principles may run afoul of the guaranties of the due process clause, especially if such a judgment has the effect of taking property from a citizen and giving it to the State." 640 F.2d at 706. However, the court of appeals latched onto *Rooker v. Fidelity Trust Co.*, 261 U.S. 114 (1923)[3] as justification for denying jurisdiction. Erroneously interpreting *Rooker*, it held:

> The fact that an arbitrary judgment of a State Court may abridge the Constitution does not

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3. Appellants sought a writ of error in this Court. The writ, which was denied for lack of jurisdiction, was filed after two appeals were taken to the highest state court in suits concerning enforcement of a deed of trust. Following the Court's decision, plaintiffs brought an action in Federal district court which was dismissed. This Court affirmed the dismissal in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

> necessarily mean that such a judgment gives rise to a claim for violation of Constitutional and Civil Rights in Federal District Court. If to review such a judgment for Constitutional violations of that character is essentially an exercise of appellate jurisdiction, a Federal District Court, whose jurisdiction is strictly original, has no power to entertain such a suit.

640 F.2d at 706. (Appendix I)

The crucial distinction between *Rooker* and the subject of this petition is that the alleged errors relied on by the plaintiffs in *Rooker* were based on findings of fact and conclusions of law of the *trial court* or included errors that were never raised at trial court level although the opportunity existed. The plaintiffs in *Rooker* were not, as is the case here, shocked by a new extraneous rule of law handed down by a state court that they did not have the opportunity to litigate. They were merely disappointed by the outcome.

Other federal district court decisions have correctly applied *Hughes v. Washington, supra.* and *Mitchum v. Foster, supra.* in asserting jurisdiction of § 1983 claims in situations strikingly analogous to petitioner's,[4] thus dramatizing the need for this Court to correct the Fifth Circuit's errant reliance on *Rooker v. Fidelity Trust Co., supra.* Petitioner's claim for relief under § 1983, precipitated by the taking of her property through the unconstitutional action of the Georgia Supreme Court, presents a substantial federal question. The constitutional issue, far from being one which is immaterial and made solely to invoke federal jurisdiction, is the very heart of plaintiff's complaint. *Bell v. Hood*, 327 U.S. 678 (1946).

The holding of the Court of Appeals is egregious not only

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4. *Robinson v. Ariyoshi*, 441 F.Supp. 559 (D.Haw. 1977); *Sotamuro v. County of Hawaii*, 402 F.Supp. 95 (D.Haw. 1975).

because it denies the petitioner redress but because it establishes precedent, contrary to the dictate of this Court, foreclosing federal courts from remedying material constitutional deprivations visited by a state court. The end result is that aggrieved persons are left without recourse for arbitrary unconstitutional acts of a state court.

II

The Court of Appeals Erred in Finding That The Georgia State Court Ruling Did Not Constitute An Erroneous, Unpredictable Change in the Law

The action of the Georgia Supreme Court in enunciating an unprecedented arbitrary rule of law allowing the state to retain petitioner's property without compensation created the constitutional cause of action, which is the subject of this petition. The court of appeals found that the Georgia Supreme Court Opinion was not "erroneous and unpredictable" and found "nothing new or novel in the opinion" (Appendix VII). In so finding, the court reviewed the Georgia Supreme Court Opinion, thus exercising the very jurisdiction that it ruled the district court did not have. Since the court of appeals characterized the finding as a "comment", it has admittedly issued dicta or rendered an advisory opinion with no binding effect.

While acknowledging the inherent authority of every state to appropriate the property of its citizens for public necessities, this Court has consistenty ruled that the Fifth and Fourteenth Amendments require the states to make just and adequate compensation to their citizens in exercising this power. *West v. Chesapeake and Potomac Telephone Co.*, 295 U.S. 662 (1935); *Cuyahoga River Power Co. v. City of Akron*, 240 U.S. 462 (1916); *Chicago Burlington and Quincy R.R. v. Chicago*, 166 U.S. 226 (1897). State deprivation of an individual's property rights without compensation likewise con-

travenes the laws of United States. 42 U.S.C. § 1983; *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972). By its decision in this case, the Georgia Court has divested petitioner of her ownership interest in Sapelo Island through a ruling which can be characterized only as arbitrary. This decision effectively legitimized a previous transaction by the State of Georgia, which petitioner alleged to be with notice of her rights but without compensation, for a portion of Sapelo Island, and cleared the way for the acquisition of an additional portion of the island by the State, in derogation of petitioner's rights.

Petitioner's property interest was created by her ownership interest in all the securities of the corporation which owned Sapelo Island property. Under the law, if the securities were delivered to her and a transfer instrument executed, she acquired ownership. The pertinent statutory provision in effect in Georgia at the time petitioner acquired ownership rights provided:

> Title to a certificate and to the shares represented thereby can be transferred only (a) By delivery of the certificate endorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby...

Ga. Laws 1939, p. 384 et seq. (former *Ga. Code Ann.* § 1902) (Appendix VIII). The validity of the transfer instrument executed and delivered to petitioner by Mr. Reynolds was never disputed by anyone at any stage of the state proceedings. The disputed issue was delivery, either actual or constructive, of the certificates. The issue, a factual one, could only be resolved in a trial and not in a motion for summary judgment.

The Georgia Supreme Court had determined that the property arrangements between petitioner and R.J. Reynolds were against public policy since the arrangements

involved a promise to marry when Mr. Reynolds was already married. Citing Georgia case law, the Georgia Supreme Court held that it would "leave the parties and the property where it found them." (Appendix VII). The effect of that ruling was that Mrs. Reynolds would have an enforceable interest in any property which had already been transferred to her, but would not be able to enforce any promise to transfer property in the future. The Georgia Court created and then resolved the crucial issue from which the petitioner's cause of action in the district court accrued: whether or not she had an ownership interest by reason of valid instrument of transfer and delivery of the certificates enabling her to seek enforcement of an existing interest rather than of a promise to transfer property. The Georgia Court held, as to this crucial issue, that as a matter of law, since the securities were not transferred into the petitioner's name on the books and stock transfer records of the corporation, petitioner had acquired no property interest in the securities and, in turn, the assets of the corporation. Thus, petitioner was held to have *no* property interest to assert. The rule of law, suddenly, unpredictably and without precedent, was in direct contradiction to the Uniform Stock Transfer Act which was in effect at the time of the arrangements between petitioner and Mr. Reynolds; it was in direct conflict with the law of Georgia in effect at the time of the ruling; and it was totally unprecedented in Georgia law or any other state's law. *See, Georgia Code Ann*, § 109A-8-301; U.C.C. § 8-301. (Appendix VIII).

In view of the prior decisions of this Court, there can be no question that the action of the Georgia Court was "state action," constituting a taking of petitioner's property for public use without compensation. *Shelly v. Kraemer*, 334 U.S. 1 (1948); *Brinkerhoff-Faris Trust and Savings Co. v. Hill, supra*; *Saunders v. Shaw, supra* As Mr. Justice Stewart stated in his concurring opinion in *Hughes v. Washington,*

supra:

> As is so often the case when a State exercises its power to make law, or to regulate, or to pursue a public project, pre-existing property interests were impaired here without any calculated decision to deprive anyone of what he once owned. But the Constitution measures a taking of property not by what a State says, or by what it intends, but by what it does. Although the State in this case made no attempt to take the accreted lands by eminent domain, it achieved the same by effecting a retroactive transformation of private into public property—without paying for the privilege of doing so.

389 U.S. at 297-298. The actions of the Georgia Court constituted a taking of petitioner's property without compensation in violation of the Fifth and Fourteenth Amendments and United States law. *Hughes v. Washington, supra*; *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922); 42 U.S.C. § 1983; *Lynch v. Household Finance Corp., supra.* Where, as here, the decision of a state's highest court is plainly arbitrary or manifestly wrong, or where the decision ignores "plain rights," this Court has consistently held that the party aggrieved by the decision may seek relief under a claim that the decision results in a taking of property without due process of law and without compensation. *Atlantic Coast Line R.R. v Phillips*, 332 U.S. 168 (1947); *Delmar Jockey Club v. Missouri*, 210 U.S. 264 (1935). *See also, United States v. Classic*, 313 U.S. 299 (1941). It is this unconstitutional action by the Supreme Court of Georgia for which petitioner seeks redress in the federal courts below.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

MARIANNE O'BRIEN REYNOLDS

/s/ JAMES A. GAMMON

James A. Gammon
1925 K Street, N.W.
Suite 300
Washington, D.C. 20006
(202) ~~293-7979~~ 861-0770

Her Attorney

Of Counsel:

James E. Meyers
A. Wray Fitch III
Gammon and Grange
1925 K Street, N.W.
Suite 300
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that I have served three true and correct copies of the foregoing "Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit" upon behalf of the petitioner, Marianne O'Brien Reynolds, by first-class mail, postage paid, to each of the following counsel of record for all respondents:

Mrs. Patricia T. Barmeyer
Assistant Attorney General
132 State Judicial Building
40 Capitol Square, S.W.
Atlanta, Georgia 30334

Mr. Wallace E. Harrell
Bennet, Gilbert, Gilbert, Whittle,
Harrell & Gayner
Post Office Box 190
Brunswick, Georgia 31520

This 27th day of July, 1981.

/s/ James A. Gammon

James A. Gammon

INDEX OF APPENDICES

Appendix I	Opinion of the United States Court of Appeals for the Fifth Circuit, affirming and incorporating the opinion of the United States District Court for the Southern District of Georgia, Brunswick Division.
Appendix II	Order of the United States District Court for the Southern District of Georgia, Brunswick Division, adopting the Judgment of the Fifth Circuit.
Appendix III	Order of the United States District Court for the Southern District of Georgia, Brunswick Division, dismissing plaintiff's complaint with prejudice.
Appendix IV	Order of Judgment of the United States Court of Appeals for the Fifth Circuit, affirming the order of the United States District Court for the Southern District of Georgia, Brunswick Division.
Appendix V	Order of the United States Court of Appeals for the Fifth Circuit, denying petitioner's Petition for Rehearing and Suggestion for Rehearing *En Banc*.
Appendix VI	Order of the Supreme Court of the United States, denying Petitioner's Petition for Writ of Certiorari to the Supreme Court of Georgia.
Appendix VII	Opinion and Judgment of the Supreme Court of Georgia, affirming grants of summary judgment in favor of respondents.
Appendix VIII	Georgia statutes.

APPENDIX I

Marianne O'Brien REYNOLDS,
Plaintiff-Appellant,

v.

STATE OF GEORGIA; George Busbee,
Individually and as Governor of
Georgia; et al., Defendants-Appellees.

No. 80-7197.

United States Court of Appeals,
Fifth Circuit.
Unit B

March 26,1981

Appeal from a Judgment of the United States District Court for the Southern District of Georgia.

Before FAY, HENDERSON and HATCHETT, Circuit Judges.

PER CURIAM:

Upon studying the briefs and the record in this matter and being fully advised through the argument of counsel, we affirm the judgment of the district court. Under date of February 14, 1980, the Honorable Anthony A. Alaimo, Chief Judge, entered a comprehensive order dealing with all of the issues raised here and since we are in complete agreement with the expressions contained therein we adopt it and attach it as an appendix.

We do add one comment. In dealing with the question of its jurisdiction, the trial court accepted plaintiff's interpreta-

tion of the Georgia Supreme Court's opinion in *Reynolds v. Estate of R. J. Reynolds*, 238 Ga. 1, 230 S.E.2d 842 (1976), as both erroneous and unpredictable. We find it to be neither. Although labeled as a "theretofore-unknown and retroactively-applied rule that ownership interests in securities do not arise until a transfer is recorded on the books of the corporation" (Plaintiff brief p. 16), an examination of the court's language reveals that the holding was merely one applying a long standing rule of pleading. "Under this ruling, the plaintiff was bound by the solemn and unstriken allegation contained in her petition, which was admitted by the answer . . ." *Id.* at 844, 230 S.E.2d 842. As the court stated:

> Accordingly, those allegations of the plaintiff's complaint, which disclose . . . cannot be disputed, nor can the allegation that the common stock was never transferred on the books of the corporation be disputed.

Id. at 844 and 845, 230 S.E.2d 842.

It is apparent that the Georgia Supreme Court was making reference to both allegations and uncontested facts contained in the pleadings. "The stock was not transferred on the books of the corporation, although Richard J. Reynolds told the plaintiff that it had been so transferred." *Id.* at 844, 230 S.E.2d 842. To equate this with an announcement that stock may only be transferred by transfer entries on the books of the corporation, stretches beyond even the broadest conceivable interpretations. We find nothing new or novel in the opinion.

Federal Courts are not designed to serve as additional appellate reviewers of State Court judgments. The dismissal is AFFIRMED.

Appendix

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

MARIANNE O'BRIEN REYNOLDS,
Plaintiff

v.

STATE OF GEORGIA; ET AL.,
Defendants.

CIVIL ACTION
No. CV 278-111

ORDER

In this case, plaintiff, Marianne O'Brien Reynolds, alleges that she has been deprived of her property without just compensation and without due process of law by an erroneous and unpredictable decision of the Georgia Supreme Court.

Based on a handwritten prenuptial agreement, executed in 1945, in which Richard J. Reynolds promised to assign to her all of the common stock in Sapelo Plantation, Inc., in exchange for her promise to marry him, plaintiff claims to own all beneficial interests in approximately 16,000 acres of land situated on Sapelo Island, Georgia. Sapelo Plantation, Inc. was sole owner of the land. Richard J. Reynolds was married at the time of the agreement. According to plaintiff, the stock was later delivered to her as promised. Afterwards, however, without her knowledge, Reynolds caused Sapelo Plantation to convey the land to him. He then dissolved the

corporation. Thereafter, he conveyed the land to defendants, the State of Georgia and several of its officials and agencies, or their predecessors-in-interest. Plaintiff now seeks to recover the land.

Plaintiff's action in this Court arises from earlier proceedings in State Court. In December, 1975, plaintiff brought an action in McIntosh County Superior Court against the State of Georgia and other individual defendants seeking, *inter-alia*, to obtain possession of the land and to block a conveyance of a portion of the land to the State. On July 21, 1976, the Court granted Summary Judgment in favor of most of the defendants on grounds including illegality of the agreement, statute of limitations, accord and satisfaction, release, defendants' position as a *bona fide* purchaser, and sovereign immunity. On August 26, the State Court granted Summary Judgment in favor of other defendants.

Plaintiff appealed to the Georgia Supreme Court, which affirmed the trial Court's grant of Summary Judgment in an opinion issued on November 3, 1976. *See Reynolds v. Estate of R. J. Reynolds*, 238 Ga. 1, 230 S.E.2d 842 (1976). In affirming the judgment of the Court below, the Supreme Court found two crucial facts to be undisputed. First, the Court found that "the common stock was never transferred on the books of the corporation." *Id.* at 4, 230 S.E.2d 842. Therefore the agreement to transfer the stock was purely executory. Secondly, the Court found that "the handwritten agreement between the plaintiff and Richard J. Reynolds was in consideration of the sum of $10 and the agreement of plaintiff to marry him at a time when he was then married to another person . . ." *Id.* By encouraging the dissolution of an existing marriage, this agreement offended the public policy of the State of Georgia. Hence, the Court declined to order its enforcement. *Id.* at 4-6, 230 S.E.2d 842.

In a Motion for Rehearing, the plaintiff objected to the Court's apparent conclusion that the agreement was execu-

tory because the stock had not been transferred on the books of the corporation. Plaintiff argued that under the law in effect at the time of the agreement, delivery of the endorsed certificates *or* transfer on the books of the corporation was sufficient to transfer ownership in stock. Plaintiff alleged that a factual issue existed as to delivery. She urged, therefore, that it was inappropriate to conclude, as a matter of law, that the agreement had never been executed and, as a result, that she had never owned the stock. Nonetheless, the Supreme Court denied the motion.

Next, plaintiff petitioned the United States Supreme Court for a Writ of Certiorari. In her petition, she alleged that she had been deprived of her property without just compensation and without due process of law by the erroneous and unpredictable decision of the Georgia Supreme Court respecting the means of transferring ownership in stock. She also alleged that the Georgia Supreme Court, in holding the prenuptial agreement to be unenforceable because violative of the State's public policy favoring the preservation of marriages, denied her the equal protection of the laws, gave effect to an unconstitutional irrebuttable presumption, and offended the full faith and credit clause of the Constitution. The Supreme Court denied the Writ on April 18, 1977. 430 U.S. 968, 97 S.Ct. 1651, 52 L.Ed2d 360.

Plaintiff filed this action on November 2, 1978. In addition to her steadfast assertion that the judgment of the Georgia Courts deprived her of property without just compensation and without due process of law, she also now asserts that the Courts' actions denied her procedural due process and a trial by jury. In this action, she seeks to set aside the judgments of the Georgia Courts as null and void, obtain a declaration of her rights to the land, recover damages for the violation of her Constitutional and Civil Rights in the amount of $10,000, and enjoin the defendants, the State of Georgia and several of its officials and agencies,

from further interfering with her rights in the land. She invokes the jurisdiction of this Court under 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. § 1983.

Defendants have moved for Summary Judgment on several grounds, including lack of subject-matter jurisdiction, *res judicata*, lack of a substantial Federal question, Eleventh Amendment, sovereign immunity, and official immunity. This motion is now before the Court.

Having considered the pleadings, memoranda, and oral arguments offered by the parties, the Court finds the questions of its jurisdiction to be dispositive. Concerning that issue, the material facts are not in dispute. Also, for the purpose of testing its jurisdiction, this Court has accepted plaintiff's interpretation of the Georgia Supreme Court's opinion. Notwithstanding, the Court is constrained to conclude, for the reasons which follow, that plaintiff seeks a character of review and a form of relief that is beyond the jurisdiction of this Court. Accordingly, defendants' Motion for Summary Judgment must be granted.

At the outset, the Court recognizes that a State Court Judgment which violates settled legal principles may run afoul of the guaranties of the due process clause, especially if such a judgment has the effect of taking property from a citizen and giving it to the State. *See Hughes v. Washington*, 389 U.S. 290, 88 S.Ct. 438, 19 L.Ed.2d 530 (1967) (Stewart, J., concurring); *Brinkerhoff-Faris Trust and Savings Co. v. Hill*, 281 U.S. 673, 50 S.Ct. 451, 74 L.Ed 1107 (1930); *American Railway Express Co. v. Kentucky*, 273 U.S. 269, 47 S.Ct. 353, 71 L.Ed 639 (1927); *Muhlker v. New York & Harlem R.R. Co.*, 197 U.S. 544, 25 S.Ct. 522, 49 L.Ed. 872 (1905); *Chicago, Burlington & Quincy R. R. Co. v. Chicago*, 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979 (1897). However, the fact that an arbitrary judgment of a State Court may abridge the Constitution does not necessarily mean that such a judgment gives rise to a *claim* for violation of Constitu-

tional and Civil Rights in Federal District Court. If to review such a judgment for Constitutional violations of that character is essentially an exercise of appellate jurisdiction, is strictly original, has no power to entertain such a suit.

In this case, plaintiff asserts that she is not seeking appellate review of the State Court decision, but that she is stating a new and distinct claim based on the injury caused by the decision. This contention, however, is not borne out by the relevant authorities and, indeed, is refuted by the prayers of her own complaint.

Foremost, in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), the Supreme Court held that a Federal District Court has no power to review a judgment by the highest Court of a state which allegedly changes state law in violation of the due process clause of the Fourteenth Amendment. In *Rooker*, appellants had sued in State Court to enforce a deed of trust. Two appeals were taken at different stages of the litigation to the highest State Court. After a final adverse decision by the highest State Court, appellants sought a Writ of Error in the United States Supreme Court. As one ground of error, appellants complained that "on the second appeal [to the highest State Court], the court took and applied a view of the trust agreement different from that taken and announced on the first

> "on the second appeal [to the highest State Court], the court took and applied a view of the trust agreement different from that taken and announced on the first appeal, and that this change in decision impaired the obligation of the agreement, contrary to the contract clause of the Constitution of the United States, and was a violation of the due process and equal protection clauses of the 14th Amendment."

Rooker v. Fidelity Trust Co., 261 U.S. 114, 117 18, 43 S.Ct. 288, 289, 67 L.Ed. 556 (1923). The Supreme Court, finding this contention insufficient to sustain jurisdiction under its

Writ of Error provision, dismissed the appeal. Following this dismissal, plaintiffs brought an action in Federal District Court based on the same allegations. The District Court dismissed the suit as not within its jurisdiction and the Supreme Court affirmed. *Rooker v. Fidelity Trust Co.*, 263 U.S. at 414-15, 44 S.Ct. at 149. Significantly, the Court concluded that although the alleged Constitutional violation did not occur until the highest State Court announced its decision, it would nevertheless be an exercise of appellate jurisdiction for the District Court to review the judgment of the State Court to determine whether the judgment transgressed the bounds of the Constitution.[1]

The Fifth Circuit Court of Appeals has consistently respected the rule announced in *Rooker*. *See Warriner v. Fink*, 307 F.2d 933 (5th Cir. 1962), *cert. denied*, 372 U.S. 943, 83 S.Ct. 937, 9 L.Ed.2d 969 (1963); *Hanna v. Home Insurance Co.*, 281 F.2d 298 (5th Cir. 1960), *cert. denied*, 365 U.S. 838, 81 S.Ct. 751, 5 L.Ed.2d 747 (1961); *Manufacturers Record Publishing Co. v. Laurer*, 268 F.2d 187 (5th.), *cert. denied*, 361 U.S. 913, 80 S.Ct. 258, 4 L.Ed.2d 184 (1959); *Williams v. Tooke*, 108 F.2d 758 (5th Cir.), *cert. denied*, 311 U.S. 655, 61 S.Ct. 8, 85 L.Ed. 419 (1940). *Cf. Cheramie v. Tucker*, 493 F.2d 586 (5th Cir.) (collateral estoppel bars Federal Court review of State Court decision for alleged misapplication of state law), *cert. denied*, 419 U.S. 868, 95 S.Ct. 126, 42 L.Ed.2d 107 (1974).

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1. The Supreme Court also observed that "[i]f the constitutional questions ... arose in the cause, it was the province and duty of the state court to decide them; and their decision ... [could only be reversed or modified] in an appropriate and timely appellate proceeding." *Id.* at 415, 44 S.Ct. at 150. But given the facts in *Rooker*, this observation cannot be interpreted as limiting the Court's holding to the familiar principle that constitutional questions, once presented to the state courts and decided by them, cannot be relitigated in federal district court. On the contrary, *Rooker* prohibits a federal district court from reviewing a state court judgment for constitutional violations of this character regardless of when the constitutional violations are said to have occurred.

For example, in *Williams v. Tooke, supra,* where plaintiff sought a decree nullifying a State Court judgment in a foreclosure suit and an accounting from those persons who held property under the deed of foreclosure, the Complaint charged State Courts with having

> "deliberately, arbitrarily, capriciously and intentionally discriminated against plaintiff and refused to award them relief, which under the settled laws of the state they were entitled to; and further, the state ... acting by its said judicial departments, in effect took plaintiffs' said property and gave it to the defendants without consideration, and without due process of law in violation of the 14th Amendment of the Constitution of the United States ...."

108 F.2d at 759. The Court of Appeals acknowledged that a judgment of a State Court could be so contrary to settled principles as to violate due process. "But," said the Court,

> "that does not help appellant in this case. The purpose of the suit is clearly to seek a review of the decisions of the [state] courts and the reversal of those decisions for error. The jurisdiction of the District Court is strictly original. It has no jurisdiction to reverse or modify the judgment of a State Court. The errors complained of could be reviewed only by the Supreme Court. It was the duty of the District Court to dismiss the suit."

Id. (*citing Rooker,* 263 U.S. 413, 44 S.Ct. 149).

In the case at bar, plaintiff asks this Court to "declare that ... the rulings of the Superior Court of McIntosh County, Georgia and the Supreme Court of Georgia ... have deprived her of her property in violation of the United States Constitution," Complaint, Count 2, ¶ 2, "[i]ssue a permanent injunction enjoining the defendants ... from implementing or taking advantage of the judgments of the Supreme Court of Georgia or the Superior Court of McIn-

tosh County . . .", *id.* ¶ 3, and "[d]eclare null and void the judgments of the Supreme Court of Georgia and the Superior Court of McIntosh County . . .",*id.* ¶ 4. Despite plaintiff's portrayal of her dissatisfaction with the Georgia Court's decisions as a distinct injury, it is manifest from the prayers of her complaint that she seeks essentially an appellate review of those decisions. "It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause . . . ." *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 175, 2 L.Ed. 60 (1803). "[T]o reverse or modify [a] judgment . . . would be an exercise of appellate jurisdiction." *Rooker,* 263 U.S. at 416, 44 S.Ct. at 150. The addition of several new defendants in this action does not alter the prohibited character of relief she seeks, *see id.* at 414, 44 S.Ct. at 149, nor is it significant that she presents her claim under section 1983 as well as under the Constitution. *See Lampkin-Asam v. Supreme Court of Florida,* 601 F.2d 760 (5th Cir. 1979) (*per curiam*). Plaintiff still seeks a type of review which is beyond the power of this Court.[2]

Finally, plaintiff's additional claim that she was denied procedural due process and a jury trial by the Superior Court's granting Summary Judgment in defendants' favor is simply frivolous. *Page v. Work,* 290 F.2d 323, 334 (9th Cir.), *cert. denied,* 368 U.S. 875, 82 S.Ct. 121, 7 L.Ed.2d 76 (1961); *In the Matter of Georgia Jewelers, Inc., Bankrupt,* 219 F.Supp. 386, 399 (N.D.Ga.), *aff'd,* 302 F.2d 362 (5th Cir. 1962). Consequently, this claim, too, fails to vest this Court

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2. In holding that a District Court has no power to review a State Court judgment for constitutional violations of the character alleged in plaintiff's complaint, this Court is aware of those authorities espousing the contrary position: *Sotomura v. County of Hawaii,* 402 F.Supp. 95 (D.Hawaii 1975), *followed,* 460 F.Supp. 473 (D.Hawaii 1978) (same case); *Robinson v. Ariyoshi,* 441 F.Supp. 559 (D.Hawaii 1975). This Court has declined to follow those authorities, however in view of *Rooker v. Fidelity Trust Co.* and its progeny within the Fifth Circuit.

with jurisdiction. *Bell v. Hood,* 327 U.S. 678, 681 82, 66 S.Ct. 773, 775, 90 L.Ed. 939 (1946).

In conclusion, and based on the foregoing reasons, defendants' Motion for Summary Judgment on the ground of lack of subject-matter jurisdiction is GRANTED. The Clerk is instructed to enter an appropriate order dismissing plaintiff's complaint with prejudice.

APPENDIX II

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

MARIANNE O'BRIEN REYNOLDS

VS.

CIVIL ACTION
278-111

STATE OF GEORGIA;
GEORGE BUSBEE,
Individually and as
Governor of Georgia; *et al.*

ORDER

The judgment of this Court in the above-styled action having been affirmed by the United States Court of Appeals for the Fifth Circuit,

IT IS HEREBY ORDERED that the judgment of the Fifth Circuit is made the judgment of this Court.

So Ordered, this 21 day of May, 1981.

/s/ Anthony A. Alaimo

Chief Judge, United States
District Court, Southern
District of Georgia

APPENDIX III

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

MARIANNE O'BRIEN REYNOLDS

vs.

STATE OF GEORGIA, *et al.*

Civil Action File
No. CV278-111

JUDGMENT

This action came on for decision before the Court, Honorable ANTHONY A. ALAIMO, United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered.

It is Ordered and Adjudged in accordance with the Order of the Court dated February 14, 1980 that plaintiff's complaint is hereby dismissed with prejudice.

Dated at Brunswick, Georgia, this 14th day of February, 1980.

/s/ Henry R. Crumley, Jr.

Henry R. Crumley, Jr.
Clerk of Court

/s/ Buford A. Rowe

Buford A. Rowe
Deputy Clerk

APPENDIX IV

IN THE

United States Court of Appeals for the Fifth Circuit Unit B

No. 80-7197
DC Docket No. CV 278-111

MARIANNE O'BRIEN REYNOLDS,
Plaintiff-Appellant,

versus

STATE OF GEORGIA;
GEORGE BUSBEE, ETC., *et al.*,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

Before FAY, HENDERSON and HATCHETT, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Georgia and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the order of the District Court appealed in this cause be and the same is hereby AFFIRMED;

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

March 26, 1981

ISSUED AS MANDATE;

APPENDIX V

IN THE

United States Court of Appeals for the Fifth Circuit

Unit B

No. 80-7197

MARIANNE O'BRIEN REYNOLDS,
Plaintiff-Appellant,

versus

STATE OF GEORGIA;
GEORGE Busbee,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA

ON PETITION FOR REHEARING AND
PETITION FOR REHEARING EN BANC

(Opinion March 26, 1981, 5 Cir., 1981, 640 F.2d 707).

Before FAY, HENDERSON and HATCHETT, Circuit Judges.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor Judge of this Administrative Unit in regular active service having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16; Fifth Circuit Judicial Council Resolution of January 14, 1981), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Peter Fay

United States Circuit Judge

U.S. Court of Appeals
FILED
April 28, 1981

Gilbert F. Ganucheau
Clerk

APPENDIX VI

SUPREME COURT OF THE UNITED STATES

No. 76-1156

MARIANNE O'BRIEN REYYNOLDS,
Petitioner,

versus

ESTATE OF RICHARD J. REYNOLDS, DECEASED,
et al.

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Georgia, No. 31642 & 31676.

ON CONSIDERATION of the petition for a writ of certiorari herein to the Supreme Court of Georgia,

IT IS ORDERED by this Court that the said petition be, and the same is hereby, denied.

April 18, 1977

APPENDIX VII

CASES

DECIDED IN THE

Supreme Court of Georgia

AT THE

SEPTEMBER TERM, 1976

31642. REYNOLDS v.
ESTATE OF R.J. REYNOLDS, ET AL.

31676. REYNOLDS v. REYNOLDS ET AL.

NICHOLS, Chief Justice.

These appeals arise from a complaint filed by Marianne O'Brien Reynolds in the Superior Court of McIntosh County against the estate of R.J. Reynolds, deceased, Annemarie S. Reynolds, and others including the State of Georgia.

The plaintiff claims title to Sapelo Island as a result of a handwritten prenuptial agreement between the plaintiff and the late Richard J. Reynolds whereby "for and in consideration of the sum of $10.00 and other valuable consideration" he did convey to the plaintiff all the common stock of Sapelo Plantation, Inc. by bill of sale and further did agree to transfer the stock upon the books of the Sapelo Plantation,

Inc. on or before sunset, October 20, 1945. The complaint alleges that the transfer of said common stock from Richard J. Reynolds was tantamount to the transfer of ownership of the 16,000 acres, more or less, of realty lying and situated on Sapelo Island, Georgia to which said corporation held title. No transfer of such stock ever took place, although Richard J. Reynolds told her that the stock had been transferred.

The complaint alleged in part that on the 20th day of October, 1945, plaintiff was an unmarried female residing in the State of California, and said plaintiff became involved in the romantic attachment with Richard J. Reynolds. As a result of the romantic attachment, Richard J. Reynolds proposed marriage to plaintiff. At the time that the said Richard J. Reynolds proposed marriage to plaintiff, she was a movie star engaged in making and producing motion pictures in Hollywood, California, and earning as a result of her profession, a sizable income in her own right. Richard J. Reynolds entreated plaintiff to forgo her career as a star actress in the motion picture industry and to marry him and return with him, upon his discharge from the armed services of the United States, to Sapelo Island, Georgia, and to live there with him as his wife. Plaintiff, being mindful of the uncertainty of marriage and knowing that Richard J. Reynolds had had a prior unsuccessful marriage, was hesitant to accept the proposal of marriage to Richard J. Reynolds and forgo the lucrative career which she had established for herself in the motion picture industry. In order to entice plaintiff to accept the proposal of marriage, the said Richard J. Reynolds did execute on the 20th day of October, 1945, a handwritten prenuptial agreement with the plaintiff in which Richard J. Reynolds for and in consideration of the sum of $10 and the agreement of plaintiff to marry him, did convey to plaintiff all the common stock of Sapelo Plantation, Inc. by bill of sale and further did agree to transfer the stock upon the books of Sapelo Plantation, Inc. on or before mid-

night of this date. The transfer of the said common stock from Richard J. Reynolds to plaintiff was tantamount to the transfer of ownership of said 16,000 acres, more or less of realty to which said corporation held title, said realty lying and situtate on Sapelo Island, Georgia.

The judgment of the trial court granting summary judgments to numerous defendants on multiple grounds was dated July 21,1976. A second summary judgment was granted to other defendants on August 26, 1976, and the appeals are from these judgments. The first ground upon which summary judgment was granted was that the contract was void as being against public policy inasmuch as its consideration was a promise to marry a person then married. As such, the contract was one promoting the dissolving of a marriage in conflict with public policy of Georgia which favors the preservation of marriage.

1. " 'Facts alleged, positively, are constructive admissions in favor of the defendant, of the facts so alleged, and, therefore, need not be proved by other evidence. The plaintiff by introducing them in his bill, and making them a part of the record, precludes himself from disputing their truth, whether they be true or false. The allegations and admissions of the complainant's bill are, therefore, evidence against him.' *Peacock v. Terry,* 9 Ga. 137 (6), 150. See also *Field v. Manly,* 185 Ga. 464, 466 (195 SE 406); *Youngblood v. Youngblood,* 74 Ga. 614 (2); *Hampton v. Thomas,* 11 Ga. 317, 320; *New Zealand Fire In. Co. v. Brewer,* 29 Ga. App. 773 (6)(116 SE 922). Under this ruling, the plaintiff was bound by the solemn and unstricken allegation contained in her petition, which was admitted by the answer . . . *East Tennessee Railway Co. v. Kane,* 92 Ga. 187 (5), 193 (18 SE 18, 22 LRA 315)." *Carver v. Carver,* 199 Ga. 352 (1) (34 SE2d 509) (1945). See also *Corr v. Corr,* 213 Ga. 699, 701 (100 SE2d 922) (1957) and cits.

Accordingly, those allegations of the plaintiff's complaint

which disclose that the handwritten prenuptial agreement between the plaintiff and Richard J. Reynolds was in consideration of the sum of $10 and the agreement of plaintiff to marry him at a time when he was then married to another person cannot be disputed nor can the allegation that the common stock was never transferred on the books of the corporation be disputed.

Under the dissenting opinion of Presiding Justice Atkinson in *Guffin v. Kelly,* 191 Ga. 880, 891 (14 SE2d 50) (1941), adopted by this court in a full bench opinion (*Morgan v. Wright,* 219 Ga. 385, 387 (133 SE2d 341) (1963)), it is required that the judgment of the trial court granting the defendant's motions for summary judgment as to Counts 1 through 6 be affirmed.

The dissent of Presiding Justice Atkinson adopted in *Morgan,* supra, reads as follows: "In 1 Pomeroy's Equity Jurisprudence (4th Ed.), 738, § 397, it is said: 'The maxim ... he who comes into equity must come with clean hands, ... assumes that the suitor asking the aid of a court of equity has himself been guilty of conduct in violation of the fundamental conceptions of equity jurisprudence, and therefore refuses him all recognition and relief with reference to the subject matter or transaction in question. It says that whenever a party, who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.' In § 401 illustrations are given for application of the principle where the plaintiff's claim is affected by his own fraud. It is said: 'If a contract has been entered into through fraud, or to accomplish any fraudulent purpose, a court of equity will not, at the suit of one of the fraudulent parties—a particeps doli, while the agreement is still executory, either

compel its execution or decree its cancellation, nor, after it has been executed, set it aside, and thus restore the plaintiff to the property or other interests which he had fraudulently transferred. Equity will leave such parties in exactly the position in which they have placed themselves, refusing all affirmative aid to either of the fraudulent participants.' In § 402 illustrations are given for application of the principle where illegality of the transaction was involved and the parties were in pari delicto. It is said: 'The principle is thus applied in the same manner when the illegality is merely a malum prohibitum, being in contravention to some positive statute, and when it is a malum in se as being contrary to public policy or to good morals. Among the latter class are agreements and transfers the consideration of which was violation of chastity, compounding of a felony, gambling, false swearing, the commission of any crime, or breach of good morals.' See *Watkins v. Nugen,* 118 Ga. 372 (45 SE 260); *Deen v. Williams,* 128 Ga. 265 (3,4) (57 SE 427); 7 Words and Phrases 444, and cit.; 21 CJ 180, §§ 163, 171, 173, 177, 178, and cit.

"The plaintiff Kelly seeks the aid of equity to escape the results of his conduct in causing legal title and possession of the land to be vested in the woman (now Mrs. Guffin), which she afterwards conveyed to her mother, Mrs. Kay. Being himself a married man, his agreement to intermarry with the woman, now Mrs. Guffin, was contrary to public policy which encourages matrimonial harmony. In these circumstances the participation of the plaintiff in the enterprise was contrary to public policy, and with respect to the matter now in question put him in the position of one who under the rules of equity has not clean hands. The case is not altered by the subsequent conveyance by the woman to her mother. The mother as grantee in such conveyance stands in the shoes of the daughter, and, without resort to the merits of the plaintiff's demand, may suggest that the plaintiff comes not with clean hands, and consequently may not enjoy

remedies that might otherwise be afforded in equity. If it were otherwise, the wholesome general rule could be avoided wherever there was alienation of the property, notwithstanding the plaintiff's hands remained defiled. In the circumstances equity will not declare a trust in favor of the plaintiff or grant him other relief, but will leave the parties and the property where it finds them, with full legal title vested in the mother."

Under this decision, the trial court did not err in granting the defendant's motion for summary judgment on the first six counts of the complaint.

2. Count 7 of the plaintiff's complaint alleges that the Sapelo Island Research Foundation, Inc. was formed in order to protect the property owned by Richard J. Reynolds and to preserve the island for the benefit of his heirs and to avoid certain property, estate and income taxes. The evidence adduced regarding this seventh count of the complaint discloses that there was no written instrument which would preserve the island for the benefit of the heirs of Richard J. Reynolds or the plaintiff.

The statute of frauds (Code § 20-401(4)) requires that any contract involving an interest in lands be in writing. While an exception to this rule applies in certain instances where part performance has taken place, yet under the evidence adduced in support of the motions for summary judgment, there had been no performance, and the claim under this count of the complaint was based solely upon an oral promise by Richard J. Reynolds prior to his death and such claim cannot be enforced. Accordingly, the trial court did not err in granting the summary judgments upon this count of the complaint. Compare *Cook v. Pridgen, Stapler & Dunn,* 45 Ga. 331 (1872); *Berolzheimer v. Taylor,* 230 Ga. 595, 600 (198 SE2d 301) (1973).

Judgments affirmed. All the Justices concur, except Gunter and Hall, JJ., who concur in the judgment only. Hill, J.,

disqualified.

ARGUED OCTOBER 13, 1976—DECIDED NOVEMBER 3, 1976—REHEARING DENIED NOVEMBER 23,1976.

Cancellation, etc. McIntosh Superior Court. Before Judge Harvey.

O'Callaghan, Saunders & Stumm, Richard L. Stumm, Gene B. McClure, for appellant.

Jones, Bird & Howell, Earle B. May, Jr., Arthur K. Bolton, Attorney General, Patricia T. Barmeyer, Assistant Attorney General, Bennett, Gilbert, Gilbert, Whittle, Harrell & Gayner, Wallace E. Harrell, Miller, Beckmann & Simpson, Daniel H. White, for appellees.

APPENDIX VIII

GEORGIA STATUTES

1. Ga. Laws 1939, pp. 384-85, repealed and superceded, Ga. Laws 1962, p. 162, *et seq.* (former *Georgia Code Ann.* § 22-1902), which is set out below:

UNIFORM STOCK TRANSFER ACT

An Act to define shares of stock and certificates of stock in corporations; to provide for and regulate the transfer of such shares and define the effect thereof: to regulate such transfers by executors and fiduciaries; to provide for the rescission of transfers, for the enforcement thereof, and to define the effect thereof; to define the effect of delivery of certificates; to define the rights of purchasers, mortgages, pledgees and other holders of certificates as security for debt; to provide for the enforcement of executions and other writs against shares of stock; to define the effect of alteration of a certificate; to provide for the issuance of new certificates in lieu of lost or destroyed certificates; to require that any claim or lien of a corporation upon shares issued by it shall be stated upon the certificate representing such shares, and for other purposes.

Be it enacted by the General Assembly of the State of Georgia and it is hereby enacted by authority of the same as follows:

Section 1. Title to a certificate and to the shares represented thereby can be transferred only, (a) By delivery of the certificate endorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or (b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares

represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by registrar or transferred by a transfer agent, except that any lien or restriction stated in the face of the certificate shall not be affected.

2. Ga. Laws 1962, pp. 156, 364 (*Georgia Code Ann.* § 109A-8-301), which is set out below:

(1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent to the interest purchased.

Opposition

FILED
AUG 31 1981
ALEXANDER L. STEVAS,
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NO. 81-169

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

MARIANNE O'BRIEN REYNOLDS,
Petitioner,

versus

STATE OF GEORGIA, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MICHAEL J. BOWERS
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant
Attorney General

ROBERT S. BOMAR
Senior Assistant
Attorney General

PATRICIA T. BARMEYER
Assistant Attorney General

WALLACE E. HARRELL
Bennet, Gilbert, Gilbert,
Whittle, Harrell & Gayner

COUNSEL OF RECORD:

PATRICIA T. BARMEYER
Assistant Attorney General
132 State Judicial Bldg.
Atlanta, Georgia 30334
Telephone: 404/656-3389

QUESTION PRESENTED

Whether the federal District Courts have jurisdiction of a claim that the final decision of a State Supreme Court violated constitutional and civil rights.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

ADDITIONAL STATUTE INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 4

I. The Fifth Circuit Correctly Ruled That A Federal District Court Does Not Have Jurisdiction To Hear A Claim That The Final Decision Of The Supreme Court of Georgia Should Be Reviewed On The Grounds That It Violated Petitioner's Constitutional And Civil Rights 4

A. *Rooker v. Fidelity Trust Company* precludes exercise by a federal District Court of jurisdiction over Petitioner's claim 4

B. Petitioner's claim to federal jurisdiction is without support in the case law 8

II. Petitioner Has Misconstrued The Decision Of The Georgia Supreme Court And Has Suffered No Violation Of Her Constitutional Or Civil Rights 10

III. Nothing In The Record Warrants A Grant Of Certiorari 13

CONCLUSION 17

APPENDIX A-1

TABLE OF AUTHORITIES

Page

Cases

Anderson v. Lecon Properties, Inc., 457 F.2d 929 (8th Cir.), *cert. denied*, 409 U.S. 879 (1972)..... 7

Atchley v. Greenhill, 517 F.2d 692 (5th Cir. 1975), *cert. denied*, 424 U.S. 915 (1976)..... 6

Bouie v. City of Columbia, 378 U.S. 347 (1964)..... 10

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673 (1930)..... 10

Chicago, B. & Q. R.R. v. Chicago, 166 U.S. 226 (1897)..... 10

Edelman v. Jordan, 415 U.S. 651 (1974)..... 14

Francisco Enterprises, Inc. v. Kirby, 482 F.2d 481 (9th Cir. 1973), *cert. denied*, 415 U.S. 916 (1974)... 7

Huffman v. Pursue, Ltd., 420 U.S. 592 (1975)..... 6

Hughes v. Washington, 389 U.S. 290 (1967).....9, 10

Kryger v. Wilson, 242 U.S. 171 (1916)..... 15

Muhlker v. New York & H. R.R., 197 U.S. 544 (1905)..... 10

Oregon v. Corvallis Sand & Gravel Co., 429 U.S. 363 (1977).....15, 16

Resolute Insurance Co. v. North Carolina, 397 F.2d 586 (4th Cir.), *cert. denied*, 393 U.S. 978 (1968)..... 7

Reynolds v. Estate of Reynolds, 238 Ga. 1, 230 S.E.2d 842 (1976).....3, 11

Robinson v. Ariyoshi, 441 F.Supp. 559 (D.Haw. 1977)..... 9

Rooker v. Fidelity Trust Co., 261 U.S. 114 (1923)..... 5

TABLE OF AUTHORITIES (Continued)

Page

Cases (Continued)

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) 4, 5, 6, 7, 9, 13

Scheuer v. Rhodes, 416 U.S. 232 (1974) 14

Seattle, R. & S. Ry. v. Washington ex rel. Linhoff, 231 U.S. 568 (1913) 15

Sotomura v. County of Hawaii, 402 F.Supp. 95 (D.Haw. 1975) 8, 9

Warriner v. Fink, 307 F.2d 933 (5th Cir. 1962), *cert. denied*, 372 U.S. 943 (1963) 7

Williams v. Tooke, 108 F.2d 758 (5th Cir.), *cert. denied*, 311 U.S. 655 (1940) 7

Wood v. Strickland, 420 U.S. 308 (1975) 14

Statutes

28 U.S.C. § 1257 ..... 1, 6

Ga. Laws 1939, pp. 384, 388 (former Ga. Code Ann. § 22-1901, *et seq.*), repealed and superseded, Ga. Laws 1962, p. 156, *et seq.* 12

Ga. Laws 1962, pp. 156, 427; Ga. Code § 109A-10-103 ..... 12, 13

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ADDITIONAL STATUTE INVOLVED

28 U.S.C. § 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

Petitioner's statement of the procedural history of the case is accurate and will not be restated here. However, there are certain undisputed facts in the record which are not fully set forth by the petitioner and will be summarized by the respondents.

In the State courts petitioner asserted unsuccessfully her claim to Sapelo Island, off the coast of Georgia. The defeat of that claim led to her assertion in the federal courts of a taking of property without just compensation. Petitioner's claim to Sapelo Island is based on a document allegedly executed by Richard J. Reynolds in October, 1945, which reads in its entirety:

> Received of Marianne Margret Gore O'Brien the sum of $10.00 ten dollars and other valuable consideration as payment in full for the common stock of Sapeloe Plantation, Inc.—said stock to be delivered by sunset Saturday Oct 20th, 1945. Richard J. Reynolds.

This document is handwritten, apparently on a page torn

from a desk calendar, and is not witnessed. The document was not recorded until September 8, 1975, almost 30 years after its date. At the time of the execution of this document, Reynolds was married to his first wife; petitioner was unmarried. The agreement was in partial consideration of petitioner's promise to marry Reynolds. Petitioner and Reynolds were married in 1946 and divorced in 1952. After the divorce Sapelo Island remained in the possession of Reynolds and his successors in title. At the present time, the State of Georgia holds record title to and is in possession and control of virtually all of the island. The north end of Sapelo Island is held and operated as a wildlife refuge, and the south end of the island includes an estuarine sanctuary and a marine research facility.

In disallowing petitioner's claim to Sapelo Island, the Georgia Supreme Court affirmed the lower court's holding that the prenuptial agreement on which petitioner based her claim was void and unenforceable because Reynolds' agreement to marry petitioner was contrary to public policy, as he was then already married. In such circumstances, equity leaves the parties where it finds them and must refuse to aid either of the participants to the illegal contract. Petitioner was the party seeking equitable relief and her claim was denied. The Supreme Court did *not* hold that stock certificates could be transferred only if the transfer was recorded on the books of the corporation. Rather, the Supreme Court noted in its statement of the allegations and uncontested facts in the record that:

> No transfer of such stock ever took place, although Richard J. Reynolds told her that the stock had been transferred. *Reynolds v. Estate of Reynolds*, 238 Ga. 1, 2, 230 S.E.2d 842 (1976), A-1.

Petitioner came to the Georgia courts asserting a claim to Sapelo Island; she had neither the property itself nor the stock certificates. The Georgia Supreme Court ruled that equity would not enforce the prenuptial agreement.

REASONS FOR DENYING THE WRIT

I. THE FIFTH CIRCUIT CORRECTLY RULED THAT A FEDERAL DISTRICT COURT DOES NOT HAVE JURISDICTION TO HEAR A CLAIM THAT THE FINAL DECISION OF THE SUPREME COURT OF GEORGIA SHOULD BE REVIEWED ON THE GROUNDS THAT IT VIOLATED PETITIONER'S CONSTITUTIONAL AND CIVIL RIGHTS.

A. *Rooker v. Fidelity Trust Company* Precludes Exercise By A Federal District Court Of Jurisdiction Over Petitioner's Claim.

It is clear from petitioner's complaint that she seeks to have the federal district court conduct what amounts to appellate review of a judgment of the Supreme Court of Georgia. The appellate nature of the review sought by petitioner is manifest from her prayers for relief, in which petitioner asked the District Court to declare, not only that the rulings of the Georgia State courts have deprived her of her property in violation of the United States Constitution, but also that the Georgia court decisions were null and void. Indeed, she sought an injunction against the continued implementation of those judgments.

Petitioner is not entitled to the appellate review she seeks because, as the District Court stated, such review is beyond the power of a federal district court. This jurisdictional rule was explicitly set forth in *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923). In *Rooker* the plaintiffs initially instituted suit in a State court to enforce a

deed of trust, and judgment was rendered in favor of the defendants. The case was then appealed to the State Supreme Court which reviewed the judgment and remanded the case to the trial court. On remand the trial court again entered judgment for the defendants and the second judgment was affirmed by the State Supreme Court. Plaintiffs then petitioned the State Supreme Court for a rehearing, raising constitutional issues for the first time. The rehearing was denied, and the plaintiffs appealed to the United States Supreme Court where their appeal was dismissed for lack of jurisdiction. *Rooker v. Fidelity Trust Company*, 261 U.S. 114 (1923). The plaintiffs then filed suit in federal district court seeking injunctive relief against the State Supreme Court judgment because of the alleged constitutional infirmities, just as the petitioner has done in the case at bar.

The district court in *Rooker* dismissed for want of jurisdiction, and the Supreme Court of the United States affirmed, holding:

> Under the legislation of Congress, no court of the United States other than this court could entertain a proceeding to reverse or modify the judgment . . . to do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original. 263 U.S. at 416.

The holding in *Rooker* means, in the context of the instant case, that even if constitutional violations were committed by the Georgia Supreme Court (and there were no such violations), the only federal court having the power to correct such violations is the United States Supreme Court. As did the district judge in the case at bar, the Supreme Court in *Rooker* assumed that the constitutional infirmities alleged were substantial for purposes

of analysis, and held that even assuming the validity of these allegations, the district court nevertheless determined correctly that it had no power to review the state court judgment.

The legislation referred to in *Rooker*, providing that only the Supreme Court has power to review a Supreme Court judgment, is codified as 28 U.S.C. § 1257, where it is provided in pertinent part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court . . . .

Rooker is a decision which properly takes cognizance of the legitimate interests States have in protecting the integrity of State appellate courts, because, it has long been recognized that:

> Federal judicial interference with state civil functions . . . can readily be interpreted "as reflecting negatively upon the state court's ability". . . . *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 603-604 (1975).

The decision in *Rooker* is also based upon the public policy of putting controversies to an end. If a party could attack a State court judgment outside the period for appeal to the Supreme Court, then all unsuccessful State court litigants would be accorded the unfair privilege of bringing stale challenges to the judgments against them. 263 U.S. at 416.

The Courts of Appeals have applied *Rooker* so as to (1) protect the integrity of State court judgments, (2) protect parties prevailing in State courts from stale challenges to their judgments, and (3) so as to recognize the congressional directive that only the United States Supreme Court can review State court judgments. *See Atchley v. Greenhill*, 517 F.2d 692 (5th Cir. 1975), *cert. denied*,

424 U.S. 915 (1976); *Francisco Enterprises, Inc. v. Kirby*, 482 F.2d 481 (9th Cir. 1973), *cert. denied*, 415 U.S. 916 (1974); *Anderson v. Lecon Properties, Inc.*, 457 F.2d 929 (8th Cir.), *cert. denied*, 409 U.S. 879 (1972); *Resolute Insurance Co. v. North Carolina*, 397 F.2d 586 (4th Cir.), *cert. denied*, 393 U.S. 978 (1968); *Warriner v. Fink*, 307 F.2d 933 (5th Cir. 1962), *cert. denied*, 372 U.S. 943 (1963); *Williams v. Tooke*, 108 F.2d 758 (5th Cir.), *cert. denied*, 311 U.S. 655 (1940).

It should be noted that *Rooker* is not distinguishable as petitioner contends. Although the issue of the constitutionality of the State statute could have been presented to the State trial court in *Rooker*, the question whether the decision of the State supreme court impaired the obligation of the agreement and violated rights under the Fourteenth Amendment could not have been raised at the State trial court level. That issue in *Rooker* arose only at the State supreme court level, and *Rooker* is precisely analogous to the case at hand. As stated by the federal district judge in the opinion below:

> Significantly, the Court [in *Rooker*] concluded that although the alleged Constitutional violation did not occur until the highest State Court announced its decision, it would nevertheless be an exercise of appellate jurisdiction for the District Court to review the judgment of the State Court to determine whether the judgment transgressed the bounds of the Constitution. Petition for Writ of Certiorari, p. 9a.

As the District Court noted, petitioner's dissatisfaction with the ruling of the Georgia Supreme Court does not give her a cause of action in federal district court, where jurisdiction is strictly original. Petitioner's only avenue for federal review of the decision of the highest court of a State, upon constitutional grounds, is direct review by the

United States Supreme Court. Petitioner's previous petition for a writ of certiorari raised virtually all the issues which are set forth in the complaint in the present action, in very much the same form. The United States Supreme Court declined to hear the case. The present case is simply a repeat performance of contentions which have been presented, argued, fully considered and decided. Petitioner's mere dissatisfaction with the decisions of the Georgia Supreme Court does not give her a cause of action in the federal courts.

B. Petitioner's Claim To Federal Jurisdiction Is Without Support In The Case Law.

Petitioner has pointed to several United States Supreme Court decisions which, in an appellate capacity, have reviewed the decisions of State supreme courts to determine whether or not the decisions were so arbitrary and unpredictable as to constitute a violation of constitutional or civil rights. These decisions, however, do not stand for the proposition that such review may be had in a federal district court, which is a court of strictly original, rather than appellate, jurisdiction. The cases cited by the petitioner proceeded through the State courts and from the highest State court directly to the United States Supreme Court; they did not involve review by federal district courts.

While numerous cases have been cited which negate federal district court jurisdiction in cases seeking the type of review which petitioner asks for here, petitioner can point to only two decisions in which federal district courts have asserted jurisdiction to hear a complaint that a State supreme court decision constituted a taking of property by the State without just compensation. These two cases are *Sotomura v. County of Hawaii*, 402 F.Supp.

95 (D.Haw. 1975), and *Robinson v. Ariyoshi*, 441 F.Supp. 559 (D.Haw. 1977). It is worthy of note that these two district court decisions from Hawaii have not been followed in any other cases and do not have the added weight they would gain from an affirmance of the assertion of jurisdiction by a federal appellate court. It is quite clear that the defendants did not plead and the courts did not consider a defense based on *Rooker* in either *Sotomura* or *Robinson*. While numerous defenses were raised, there was no assertion that the district court was without jurisdiction to hear the plaintiff's complaint because it was in effect an effort to obtain appellate review of a State supreme court decision. In contrast, that is precisely the basis upon which the district court dismissed the complaint in the present case.

Moreover, the facts in *Sotomura* and *Robinson* are clearly distinguishable from the present case. Both in *Sotomura* and in *Robinson*, the State Supreme Court decisions expanded State water rights and State ownership of submerged lands at the expense of private individuals, thus giving rise to a claim of taking without just compensation. The present case contrasts with *Sotomura* and *Robinson*, and *Hughes v. Washington*, 389 U.S. 290 (1967) as well, in that the Georgia Supreme Court decision did not operate to vest title to Sapelo Island in the State of Georgia. In the present case the property dispute in the State courts was essentially between the petitioner on the one hand and Richard J. Reynolds, his estate and his transferees on the other hand. The Georgia courts ruled in favor of Reynolds and thus in favor of his successors in title, one of whom happened to be the State of Georgia. The State holds title to Sapelo Island based on deeds of conveyance for which over $4 million was paid,

and not solely by virtue of the Supreme Court of Georgia decision. The Georgia courts denied plaintiff's claim to the property based on the alleged prenuptial agreement; the State of Georgia benefited from that decision as successor in title to Richard J. Reynolds, just as any party would. The decision cannot be construed as a taking of property by the State without compensation; the only question was to whom should the compensation have been paid. Based on the Georgia Supreme Court decision, the State justifiedly purchased the property and paid the compensation not to petitioner but to a transferee from Richard J. Reynolds. By ruling that the petitioner had no claim to Sapelo Island, the Georgia Supreme Court merely resolved a title dispute but did not "take" anything away from her.

The other cases relied upon by petitioner, such as *Hughes v. Washington*, 389 U.S. 290 (1967); *Bouie v. City of Columbia*, 378 U.S. 347 (1964); *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930); *Muhlker v. New York & H. R.R.*, 197 U.S. 544 (1905); and *Chicago, B. & Q. R.R. v. Chicago*, 166 U.S. 226 (1897), do not support her claim to federal district court jurisdiction, for each of those decisions by the United States Supreme Court was rendered on appellate review of State supreme court decisions, not in an independent federal action brought in district court.

II. PETITIONER HAS MISCONSTRUED THE DECISION OF THE GEORGIA SUPREME COURT AND HAS SUFFERED NO VIOLATION OF HER CONSTITUTIONAL OR CIVIL RIGHTS.

The heart of petitioner's claim in this case is her contention that the key part of the Georgia Supreme Court

judgment was the statement:

> The stock was not transferred on the books of the corporation. . . . *Reynolds v. Estate of Reynolds*, 238 Ga. 1, 2, 230 S.E.2d 842, 844 (1976), A-3.

Plaintiff has erroneously chosen to construe that statement to mean that stock must be transferred on the books of the corporation before there can be a valid conveyance of stock. As the Fifth Circuit Court of Appeals wisely observed below:

> It is apparent that the Georgia Supreme Court was making reference to both allegations and uncontested facts contained in the pleadings. . . . To equate this with an announcement that stock may only be transferred by transfer entries on the books of the corporation, stretches beyond even the broadest conceivable interpretations. We find nothing new or novel in the opinion. Petition for Writ of Certiorari, p. 3a.

To put the stock transfer matter into proper perspective, the sequence of argument in the Georgia courts on this matter shold be reviewed. Petitioner intially claimed in the superior court that by virtue of the 1945 prenuptial agreement, she owned all of the stock of Sapelo Plantation, Inc., even though the stock had not been transferred to her as promised in the agreement. The State responded that the 1945 agreement was void and unenforceable, and ultimately, the trial court granted summary judgment on this point of law. In an attempt to avoid the trial court's ruling on the legality of the 1945 agreement, petitioner argued in her appellate brief to the Georgia Supreme Court that the agreement was actually a "bill of sale" and that the stock transfer was executed such that her purported ownership was vested. In response to this argument the State pointed out that the Uniform Stock Trans-

fer Act applied and that under this Act "delivery" of stock certificates was essential to any transfer of corporate stock. The State further pointed out that any attempted transfer of stock, other than by delivery, constituted a promise to transfer governed by general contract law.[1] Plaintiff responded by claiming that there was a disputed fact as to delivery, but the State, in its reply brief, showed conclusively that there had not been any delivery. This showing was made from petitioner's own testimony and from the allegations in her complaint.

The document allegedly executed by R. J. Reynolds stated:

> [S]aid stock to be delivered by sunset Saturday, Oct. 20th, 1945.

In her verified complaint petitioner stated:

> Said transfer of stock had not been made as promised.

It is obvious that had the certificates ever been delivered, petitioner would have had them and would have been a stockholder. Petitioner's statements given in deposition indicated that she did not consider herself a stockholder because she had not received the stock certificates.

The record before the Georgia Supreme Court was clear: The stock was never delivered and it was never transferred on the books of the corporation. As a consequence, petitioner did not own the stock under the Uniform Stock Transfer Act, and as the court held, the

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[1] Section 10 of the Uniform Stock Transfer Act provided as follows: "An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts." Ga. Laws 1939, pp. 384, 388 (former Ga. Code Ann. § 22-1901, *et seq.*), repealed and superseded, Ga. Laws 1962, p. 156, *et seq.*

1945 agreement was void and unenforceable under general contract law. The court did not hold as contended by petitioner that the transfer on the corporate books was necessary in any case for petitioner to have ownership. Instead, the court merely noted the fact that a transfer on the corporate books had not occurred, according to petitioner's own allegations. As the Fifth Circuit noted, the Georgia Supreme Court decision was "merely one applying a long standing rule of pleading." Petition for Writ of Certiorari, p. 3a. The court's decision simply does not hold that a transfer on the books is required for the conveyance of stock. Therefore, there is no novel, arbitrary, unprecedented or unpredictable ruling as alleged by petitioner.

III. NOTHING IN THE RECORD WARRANTS REVIEW BY THIS COURT UPON A WRIT OF CERTIORARI.

Petitioner has put forth no valid reason why the Supreme Court should review the unanimous *per curiam* decision of the Fifth Circuit in this case. That decision merely followed the holding of the United States Supreme Court in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). As discussed above, petitioner's reliance upon other decisions of the United States Supreme Court for support of her assertion of jurisdiction in the federal district court is misplaced. In addition, there has been cited no example of conflict among the Circuit Courts of Appeals or of confusion on the part of the lower federal courts on the question presented by the petition.

Review by the Supreme Court upon a writ of certiorari would be of little significance. The Uniform Stock Transfer Act was repealed more than fifteen years ago (Ga. Laws 1962, pp. 156, 427; Ga. Code § 109A-10-103), and

any decision by this Court on this issue would have no effect in the present or future securities market. Respondents respectfully submit that the peculiar circumstances of this case are unique and that no principle of national import would result from a grant of the writ.

While this brief in opposition to the petition deals only with the jurisdictional issue and with the construction of the Georgia Supreme Court decision, there are numerous other defenses sufficient to require judgment for the respondents.

The respondents pleaded and argued to the lower federal courts that petitioner's complaint is barred by *res judicata*, in that it seeks to relitigate her claim to Sapelo Island which was resolved against her in the State courts, and barred by the Eleventh Amendment, sovereign immunity and the qualified immunity for State officials. The relief sought by petitioner voiding past actions of the highest officials of the executive and legislative branches of State government is clearly retrospective in nature and thus barred by the Eleventh Amendment. *See Edelman v. Jordan*, 415 U.S. 651 (1974). With respect to the individual defendants, all the allegations of the complaint concern actions undertaken by them in their official capacity, and they are protected by a qualified immunity from liability for alleged civil rights deprivations occasioned by those acts. *Wood v. Strickland*, 420 U.S. 308 (1975); *Scheuer v. Rhodes*, 416 U.S. 232 (1974). The complaint did not allege any facts which could even arguably pierce the protection of official immunity.

Another defense not reached by either the district court or the Fifth Circuit is respondents' contention that petitioner pleaded no substantial federal question so as to invoke federal jurisdiction. In essence, petitioner alleged

no more than dissatisfaction with the merits of the Georgia Supreme Court decision. Even an erroneous decision of a State court on matters within its jurisdiction does not violate the Constitution or laws of the United States, so long as the parties have been fully heard in the regular course of judicial proceedings. *Seattle, R. & S. Ry. v. Washington ex rel. Linhoff*, 231 U.S. 568, 570 (1913).

Further, even if the prior litigation in the State courts is not *res judicata* in the present action, the petitioner's claim to a property interest in Sapelo Island, an essential element of her assertion of a taking of property without compensation, is defeated as a matter of law on several State law grounds which were raised in the State courts and the lower federal courts. Respondents contend that petitioner's claim to Sapelo Island is absolutely barred by the applicable statutes of limitations and the laches of the petitioner, as her claim is based on a 1945 agreement and her complaint in the State courts was not filed until 1975. Because of numerous intervening agreements between petitioner and R. J. Reynolds and his estate, including a 1952 property settlement agreement incorporated in their divorce decree, her claim is also barred by accord and satisfaction and release.

The most that petitioner can say is that the State courts have erroneously construed or applied the statutory and decisional law of the State of Georgia relating to a matter of State law. The issue is purely a question of local law which is of no concern to this Court and is clearly insufficient to raise a federal question. *Kryger v. Wilson*, 242 U.S. 171 (1916). It is well settled that State law, rather than federal law, governs issues relating to the ownership of real property unless some other principle of federal law requires a different result. *Oregon v. Corvallis*

Sand & Gravel Co., 429 U.S. 363 (1977). In this case a ruling on petitioner's claim of a taking of her property and deprivation of her constitutional rights would not secure petitioner with the relief she ultimately seeks because the property law issues in this case are governed by State law. Multiple independently valid State law grounds would justify the holding by the Georgia courts that petitioner has no property interest in Sapelo Island.

CONCLUSION

For the reasons set forth above, the respondents respectfully urge this Court to deny the petition for a writ of certiorari.

Respectfully submitted,

MICHAEL J. BOWERS
Attorney General

ROBERT S. STUBBS, II
Executive Assistant Attorney General

DON A. LANGHAM
First Assistant Attorney General

ROBERT S. BOMAR
Senior Assistant Attorney General

PATRICIA T. BARMEYER
Assistant Attorney General

WALLACE E. HARRELL
Bennet, Gilbert, Gilbert,
Whittle, Harrell & Gayner

Counsel of Record:

PATRICIA T. BARMEYER
Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334
Telephone: 404/656-3389

APPENDIX

APPENDIX [2]

31642. REYNOLDS v. ESTATE OF R. J. REYNOLDS et al.
31676. REYNOLDS v. REYNOLDS et al.

NICHOLS, Chief Justice.

These appeals arise from a complaint filed by Marianne O'Brien Reynolds in the Superior Court of McIntosh County against the estate of R. J. Reynolds, deceased, Annemarie S. Reynolds, and others including the State of Georgia.

The plaintiff claims title to Sapelo Island as a result of a handwritten prenuptial agreement between the plaintiff and the late Richard J. Reynolds whereby "for and in consideration of the sum of $10.00 and other valuable consideration" he did convey to the plaintiff all the common stock of Sapelo Plantation, Inc. by bill of sale and further did agree to transfer the stock upon the books of the Sapelo Plantation, Inc. on or before sunset, October 20, 1945. The complaint alleges that the transfer of said common stock from Richard J. Reynolds was tantamount to the transfer of ownership of the 16,000 acres, more or less, of realty lying and situated on Sapelo Island, Georgia to which said corporation held title. No transfer of such stock ever took place, although Richard J. Reynolds told her that the stock had been transferred.

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[2] Because several paragraphs were omitted, apparently inadvertently, from the decision of the Supreme Court of Georgia which is printed as Appendix VII of the Petition, that decision is printed in its entirety as an appendix to this brief.

The complaint alleged in part that on the 20th day of October, 1945, plaintiff was an unmarried female residing in the State of California, and said plaintiff became involved in the romantic attachment with Richard J. Reynolds. As a result of the romantic attachment, Richard J. Reynolds proposed marriage to plaintiff. At the time that the said Richard J. Reynolds proposed marriage to plaintiff, she was a movie star engaged in making and producing motion pictures in Hollywood, California, and earning as a result of her profession, a sizable income in her own right. Richard J. Reynolds entreated plaintiff to forego her career as a star actress in the motion picture industry and to marry him and return with him, upon his discharge from the armed services of the United States, to Sapelo Island, Georgia, and to live there with him as his wife. Plaintiff, being mindful of the uncertainty of marriage and knowing that Richard J. Richards had had a prior unsuccessful marriage, was hesitant to accept the proposal of marriage to Richard J. Reynolds and forgo the lucrative career which she had established for herself in the motion picture industry. In order to entice plaintiff to accept the proposal of marriage, the said Richard J. Reynolds did execute on the 20th day of October, 1945, a handwritten prenuptial agreement with the plaintiff in which Richard J. Reynolds for and in consideration of the sum of $10 and the agreement of plaintiff to marry him, did convey to plaintiff all the common stock of Sapelo Plantation, Inc. by bill of sale and further did agree to transfer the stock upon the books of Sapelo Plantation, Inc. on or before midnight of this date. The transfer of the said common stock from Richard J. Reynolds to plaintiff was tantamount to the transfer of ownership of said 16,000 acres, more or less of realty to which said corporation held title, said realty lying and situate on Sapelo Island, Georgia.

The stock was not transferred on the books of the corporation, although Richard J. Reynolds told the plaintiff that it had been so transferred. During subsequent years the property was sold, corporations dissolved and new corporations formed, a portion of the property sold to the State of Georgia and other transfers made.

The plaintiff seeks to set aside such deeds, obtain the island, as well as other relief.

Exhibits submitted in support of the motions for summary judgment include copies of the divorce complaint (filed after the "Bill of Sale" was executed) against Richard J. Reynolds by his then wife Elizabeth Dillard Reynolds and the divorce decree dated June 14, 1946.

The judgment of the trial court granting summary judgments to numerous defendants on multiple grounds was dated July 21, 1976. A second summary judgment was granted to other defendants on August 26, 1976, and the appeals are from these judgments. The first ground upon which summary judgment was granted was that the contract was void as being against public policy inasmuch as its consideration was a promise to marry a person then married. As such, the contract was one promoting the dissolving of a marriage in conflict with public policy of Georgia which favors the preservation of marriage.

1. " 'Facts alleged, positively, are constructive admismissions in favor of the defendant, of the facts so alleged, and, therefore, need not be proved by other evidence. The plaintiff by introducing them in his bill, and making them a part of the record, precludes himself from disputing their truth, whether they be true or false. The allegations and admissions of the complainant's bill are, therefore, evidence against him.' *Peacock v. Terry*, 9 Ga. 137(6), 150. See also *Field v. Manly*, 185 Ga. 464, 466 (195 SE 406);

Youngblood v. Youngblood, 74 Ga. 614(2); *Hampton v. Thomas*, 11 Ga. 317, 320; *New Zealand Fire Ins. Co. v. Brewer*, 29 Ga. App. 773(6) (116 SE 922). Under this ruling, the plaintiff was bound by the solemn and unstricken allegation contained in her petition, which was admitted by the answer . . . *East Tennessee Railway Co. v. Kane*, 92 Ga. 187(5), 193 (18 SE 18, 22 LRA 315)." *Carver v. Carver*, 199 Ga. 352(1) (34 SE2d 509) (1945). See also *Corr v. Corr*, 213 Ga. 699, 701 (100 SE2d 922) (1957) and cits.

Accordingly, those allegations of the plaintiff's complaint which disclose that the handwritten prenuptial agreement between the plaintiff and Richard J. Reynolds was in consideration of the sum of $10 and the agreement of plaintiff to marry him at a time when he was then married to another person cannot be disputed nor can the allegation that the common stock was never transferred on the books of the corporation be disputed.

Under the dissenting opinion of Presiding Justice Atkinson in *Guffin v. Kelly*, 191 Ga. 880, 891 (14 SE2d 50) (1941), adopted by this court in a full bench opinion (*Morgan v. Wright*, 219 Ga. 385, 387 (133 SE2d 341) (1963)), it is required that the judgment of the trial court granting the defendant's motions for summary judgment as to Counts 1 through 6 be affirmed.

The dissent of Presiding Justice Atkinson adopted in *Morgan*, supra, reads as follows: "In 1 Pomeroy's Equity Jurisprudence (4th Ed.), 738, § 397, it is said: 'The maxim . . . he who comes into equity must come with clean hands, . . . assumes that the suitor asking the aid of a court of equity has himself been guilty of conduct in violation of the fundamental conceptions of equity jurisprudence, and therefore refuses him all recognition and relief with

reference to the subject matter or transaction in question. It says that whenever a party, who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.' In § 401 illustrations are given for application of the principle where the plaintiff's claim is affected by his own fraud. It is said: 'If a contract has been entered into through fraud, or to accomplish any fraudulent purpose, a court of equity will not, at the suit of one of the fradulent parties—a particeps doli, while the agreement is still executory, either compel its execution or decree its cancellation, nor, after it has been executed, set it aside, and thus restore the plaintiff to the property or other interests which he had fraudulently transferred. Equity will leave such parties in exactly the position in which they have placed themselves, refusing all affirmative aid to either of the fraudulent participants.' In § 402 illustrations are given for application of the principle where illegality of the transaction was involved and the parties were in pari delicto. It is said: 'The principle is thus applied in the same manner when the illegality is merely a malum prohibitum, being in contravention to some positive statute, and when it is a malum in se as being contrary to public policy or to good morals. Among the latter class are agreements and transfers the consideration of which was violation of chasity, compounding of a felony, gambling, false swearing, the commission of any crime, or breach of good morals.' See *Watkins v. Nugen*, 118 Ga. 372 (45 SE 260); *Deen v. Williams*, 128 Ga. 265 (3, 4) (57 SE 427); 7 Words and Phrases 444, and cit.; 21 CJ 180, §§ 163, 171, 173, 177, 178, and cit.

"The plaintiff Kelly seeks the aid of equity to escape the results of his conduct in causing legal title and possession of the land to be vested in the woman (now Mrs. Guffin), which she afterwards conveyed to her mother, Mrs. Kay. Being himself a married man, his agreement to intermarry with the woman, now Mrs. Guffin, was contrary to public policy which encourages matrimonial harmony. In these circumstances the participation of the plaintiff in the enterprise was contrary to public policy, and with respect to the matter now in question put him in the position of one who under the rules of equity has not clean hands. The case is not altered by the subsequent conveyance by the woman to her mother. The mother as grantee in such conveyance stands in the shoes of the daughter, and, without resort to the merits of the plaintiff's demand, may suggest that the plaintiff comes not with clean hands, and consequently may not enjoy remedies that might otherwise be afforded in equity. If it were otherwise, the wholesome general rule could be avoided wherever there was alienation of the property, notwithstanding the plaintiff's hands remained defiled. In the circumstances equity will not declare a trust in favor of the plaintiff or grant him other relief, but will leave the parties and the property where it finds them, with full legal title vested in the mother."

Under this decision, the trial court did not err in granting the defendant's motion for summary judgment on the first six counts of the complaint.

2. Count 7 of the plaintiff's complaint alleges that the Sapelo Island Research Foundation, Inc. was formed in order to protect the property owned by Richard J. Reynolds and to preserve the island for the benefit of his heirs and to avoid certain property, estate and income

taxes. The evidence adduced regarding this seventh count of the complaint discloses that there was no written instrument which would preserve the island for the benefit of the heirs of Richard J. Reynolds or the plaintiff.

The statute of frauds (Code § 20-401(4)) requires that any contract involving an interest in lands be in writing. While an exception to this rule applies in certain instances where part performance has taken place, yet under the evidence adduced in support of the motions for summary judgment, there had been no performance, and the claim under this count of the complaint was based solely upon an oral promise by R[illegible]ard J. Reynolds prior to his death and such claim cannot be enforced. Accordingly, the trial court did not err in granting the summary judgments upon this count of the complaint. Compare *Cook v. Pridgen, Stapler & Dunn*, 45 Ga. 331 (1872); *Berolzheimer v. Taylor*, 230 Ga. 595, 600 (198 SE2d 301) (1973).

Judgments affirmed. All the Justices concur, except Gunter and Hall, JJ., who concur in the judgment only. Hill, J., disqualified.

ARGUED OCTOBER 13, 1976—DECIDED NOVEMBER 3, 1976—REHEARING DENIED NOVEMBER 23, 1976.

Cancellation, etc. McIntosh Superior Court. Before Judge Harvey.

O'Callaghan, Saunders & Stumm, Richard L. Stumm, Gene B. McClure, for appellant.

Jones, Bird & Howell, Earle B. May, Jr., Arthur K. Bolton, Attorney General, Patricia T. Barmeyer, Assistant Attorney General, Bennett, Gilbert, Gilbert, Whittle, Harrell & Gayner, Wallace E. Harrell, Miller, Beckmann & Simpson, Daniel H. White, for appellees.

Petitioner's Reply Brief

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No. 81-169

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

MARIANNE O'BRIEN REYNOLDS
Petitioner,

versus

STATE OF GEORGIA; GEORGE BUSBEE, ETC., *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONER'S REPLY BRIEF

JAMES A. GAMMON
1925 K. Street, N.W.
Suite 300
Washington, D.C. 20006
Telephone: (202) 861-0770

Attorney for Petitioner

Of Counsel:

JAMES E. MEYERS
A. WRAY FITCH III
Gammon & Grange
1925 K. Street, N.W.
Suite 300
Washington, D.C. 20006

TABLE OF CONTENTS

I. *ROOKER v. FIDELITY TRUST COMPANY* DOES NOT PRECLUDE EXERCISE BY A FEDERAL DISTRICT COURT OF JURISDICTION OVER PETITIONER'S CLAIM . . . 1

II. THE *ROBINSON* AND *SOTOMURA* DECISIONS, ON APPEAL TO THE NINTH CIRCUIT, ARE PRECISELY APPOSITE TO THE DECISION PRESENTED FOR REVIEW AND ARE CITED EXAMPLES OF CONFLICT ON THE PART OF THE LOWER FEDERAL COURTS ON THE QUESTION PRESENTED BY THE PETITION 5

III. THE BARS RAISED BY RESPONDENTS ARE NOT JURISDICTIONAL, AND RESOLUTION PROPERLY LIES WITH THE DISTRICT COURT 8

1. Res Judicata is Not Operable in This Case 9

2. A State and its Officers May be Sued Under Title 42 U.S.C. § 1983 9

3. The Cause of Action is Not Barred by The Statute of Limitations 10

IV. CONCLUSION. 10

TABLE OF AUTHORITIES

CASES:

Allen v. Baltimore & Ohio R. Co.,
114 U.S. 311 (1885) 9,10

Bouie v. City of Columbia,
378 U.S. 347 (1964) 3

Brinkerhoff-Faris Trust & Savings Co. v. Hill,
281 U.S. 673 (1930) 2

Chicago, B. & Q. R.R. v. Chicago,
166 U.S. 226 (1897) 3,7

Ellis v. Dyson,
421 U.S. 426 (1975) 4

Ex Parte Virginia,
100 U.S. 338 (1879) 3

Ex Parte Young,
209 U.S. 123 (1908) 9

Georgia R. Co. v. Redwine.
342 U.S. 229 (1953) 9

Hughes v. Washington,
389 U.S. 290 (1967) 3,5

Land v. Dollar,
330 U.S. 731 (1947) 9

Maher v. Gagne,
____U.S.____, 65 L. Ed. 2d 653,
100 S. Ct. 2570 (1980) 9

Maryland v. Baltimore Radio Show, Inc.
338 U.S. 912 (1950) 9

Mitchum v. Foster,
407 U.S. 225 (1972) 3,5

Monell v. New York City Dept. of Soc. Serv.,
436 U.S. 698 (1978) 9

Muhlker v. New York H. R.R.,
197 U.S. 544 (1905) 3

New Jersey Educational Ass'n. v. Burke,
579 F.2d 764 (3rd Cir.),
cert. denied, 439 U.S. 894 (1978) 4

Reynolds v. State of Georgia,
640 F.2d 707 (5th Cir. 1981) 8

Rindal v. Wesley,
167 U.S. 204 (1897) 9

Robinson v. Aryoshi,
441 F. Supp. 95 (D. Haw. 1977), *appeal docketed*,
78-2264 (9th Cir. June 12, 1978) 5,7,8

Rooker v. Fidelity Trust Company,
263 U.S. 413 (1923) 1

Rooker v. Fidelity Trust Company,
261 U.S. 114 (1923) 2

Saunders v. Shaw,
244 U.S. 317 (1917) 2

Scheuer v. Rhodes,
416 U.S. 232 (1974) 9

Sosna v. Iowa,
419 U.S. 393 (1975). 4

Sotomura v. County of Hawaii,
460 F. Supp. 473 (D. Haw. 1978), *appeals docketed*,
80-4488, 80-4498 (9th Cir. Oct. 2, 14, 1980) 6,8

Sotomura v. County of Hawaii,
402 F. Supp. 95 (D. Haw. 1975), *appeals docketed*,
80-4488, 80-4498 (9th Cir. Oct. 2, 14, 1980) 5,8

Stone v. Powell,
428 U.S. 465 (1976) 4

United States v. Lee,
106 U.S. 196 (1882) 9

Vendo Co. v. Lektro-Vend Corp.,
433 U.S. 623 (1977) 3,4

Whitner v. Davis,
410 F.2d 24 (9th Cir. 1969) 4

CONSTITUTION AND STATUTES:

CONSTITUTION OF THE UNITED STATES:

Amendment XIV, Section 5 9

UNITED STATES STATUTES:

28 U.S.C. § 1257 3
42 U.S.C. § 1983 ..... *passim*

OTHER:

RULES OF THE SUPREME COURT OF THE UNITED STATES:

Rule 17.1 (a) 8

TREATISES:

Averitt, *Federal Section 1983 Actions After State Court Judgments*, 44 U. Colo. L. Rev. 191 (1974) 4

Developments in the Law, Section 1983 and Federalsim, 90 Harv. L. Rev. 1113 (1977) 4

McCormack, *Federalism and Section 1983: Limitations on Enforcement of Federal Claims*, Part II, 60 Va. L. Rev. 250 (1974) 4

Theis, *Res Judicata In Civil Rights Act Cases: An Introduction to the Problem*, 80 Nw. U. L. Rev. (1976) 4

IN THE

Supreme Court of the United States

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No. 81-169

MARIANNE O'BRIEN REYNOLDS,
Petitioner,

versus

STATE OF GEORGIA; GEORGE BUSBEE, ETC., *et al.*,
Respondents.

PETITIONER'S REPLY BRIEF

Petitioner, Marianne O'Brien Reynolds, submits this brief in reply to respondents' Brief in Opposition ("Opposition") to her Petition for Writ of Certiorari ("Petition").

I

ROOKER v. FIDELITY TRUST COMPANY DOES NOT PRECLUDE EXERCISE BY A FEDERAL DISTRICT COURT OF JURISDICTION OVER PETITIONER'S CLAIM

Respondents contend it is clear from petitioner's complaint that she seeks review of a judgment of the Supreme Court of Georgia, a review forbidden by the jurisdictional rule set forth in *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923). Opposition at 4. As will be shown, however, *Rooker* is not applicable here. Petitioner raised the federal question of the Supreme Court of Georgia's unconstitutional taking at her very first opportunity: the petition to review that decision. [1] Con-

1. Petition at 6 n.2.

trary to the situation in *Rooker* where the alleged constitutional deprivations were based on findings and conclusions of the *trial court* or included errors that were never raised at the trial court level although the opportunity existed, here the petitioner was shocked by a new, extraneous rule of law—vis-a-vis the Supreme Court of Georgia's radical departure from the state's well-established law on stock transfers—imposed, *sua sponte*, by that court's decision. Petitioner's claimed wrong in this federal action was not within any of the issues raised or tried by the Georgia courts. No party, including the State of Georgia, could have anticipated what the Supreme Court of Georgia did on its own initiative at the eleventh hour of the state court proceedings. Thus, the rule of *Rooker v. Fidelity Trust Company*, 261 U.S. 114 (1923) ("Rooker II") holding that the raising of a federal question on rehearing "came too late" to provide the state court "adequate state grounds" for decision is inapposite here. The *Rooker* decisions, as far as they went, dealt with a situation that was a final judgment—*res judicata*—for federal jurisdictional purposes.

This Court's decision in *Saunders v. Shaw*, 244 U.S. 317 (1917), unlike *Rooker*, is correctly applicable to the petitioner's case. The Court in *Saunders* articulated a qualification to the jurisdictional aspect of *"res judicata"* that was not relevant to the *Rooker* plaintiffs but which is clearly operable in petitioner's case. The Court held in *Saunders* that it is not too late to raise a federal question on rehearing "when the act complained of is the act of the [state] Supreme Court, done unexpectedly at the end of the proceeding, when plaintiff in error no longer has any right to add to the record. . ." 244 U.S. at 320, Holmes, J.

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673 (1930) parallels *Saunders*. The holding of a taking of property by a court decision is explicit:

> The federal guarantee of due process extends to state action through its judicial as well as through its legislative, executive, or administrative branch of government.

281 U.S. at 680. *See also Hughes v. Washington*, 389 U.S. 290 (1967); *Bouie v. City of Columbia*, 378 U.S. 347 (1964); *Muhlker v. New York & H. R.R.*, 197 U.S. 544 (1905); *Chicago, B. & Q. R.R. v Chicago*, 166 U.S. 226 (1897). By holding that a motion for rehearing is not too late to raise a federal question under the *Saunders-Brinkerhoff* concept, federal jurisdiction attaches. 28 U.S.C. § 1257, Opposition at 1-2. And where, as here, the federal constitutional issues are raised at rehearing—the first opportunity—due process of law requires a trial on the merits in a court of original jurisdiction. *See Mitchum v. Foster*, 407 U.S. 225 (1972).

This Court has recognized federal district court jurisdiction of claims arising under Title 42 U.S.C. § 1983 for unconstitutional actions committed by a state's judiciary. *Mitchum v. Foster*, 407 U.S. 225 (1972); *Ex Parte Virginia*, 100 U.S. 338 (1879). *See* Petition at 10-11. It is worthy to note that respondents have not addressed *Mitchum*, which came before this Court from a Florida federal district court. *See* Opposition at 10.

The jurisdiction declined below was not appellate in any sense. Petitioner did not invoke the district court's jurisdiction solely to reverse, affirm or modify the Supreme Court of Georgia judgment, but rather to give her the opportunity to be heard for the first time on constitutional issues in which she had great stake, and to enjoin the execution of the judgment by state officials. When such an action lies, it invokes an original jurisdiction under 42 U.S.C. § 1983. Congress enacted that law to provide federal equitable redress for constitutional deprivations "under color of state law," intending specifically "to protect civil rights against unconstitutional actions of state courts," [2] or of other state officials. The jurisdiction that would be "frustrated if the federal court was not empowered to enjoin a state court proceeding," as the Court stated in *Mitchum*, would no less be defeated if the Court were not empowered to

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2. *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 633 (1977).

enjoin the enforcement of a state court judgment, at least when the constitutional infringement inheres in the action of the state court. 407 U.S. at 237-241. *See also Sosna v. Iowa*, 419 U.S. 393 (1975); *Ellis v. Dyson*, 421 U.S. 426, 435 (1975).

This Court has repeatedly denied review of circuit court judgments in actions claiming relief under Section 1983 actions wherein relief was sought on grounds that were or might have been determined in prior state proceedings, whether the redress was granted or denied.[3] These dispositions, and the contrariety of judgments they have left standing, would be totally inexplicable if, as State officials argue, all such cases invoke an appellate jurisdiction that the federal district courts do not possess.

Petitioner submits that there is no doubt that redress by an independent action is provided when, as here, "an opportunity for full and fair litigation" [4] (of the constitutional claim) was not afforded in the state proceeding. If the remedy were barred in that extreme contingency, it obviously could not serve, as Section 1983 was meant to serve, "to protect civil rights against unconstitutional action of state courts." *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. at 633; *cf. Whitner v. Davis*, 410 F.2d 24, 31 (9th Cir. 1969) (state court judgment which failed to consider adequacy of administration remedy claimed to bar relief did not foreclose, on ground of *res judicata*, civil rights action in federal district court). Since *Rooker*[5] is not

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3. The cases are collected in Developments in the Law, Section 1933 and Federalism, 90 Harv. L. Rev. 1133, 1330-54 (1977); Theis, *Res Judicata in Civil Rights Act Cases: An Introduction to the Problem*, 80 Nw. U.L. Rev. 859 (1976); McCormack, *Federalsim and Section 1983: Limitation on Enforcement of Federal Claims*, Part II, 60 Va. L. Rev. 250 (1974); Averitt, *Federal Section 1983 Actions After State Court Judgments*, 44 U. Colo. L. Rev. 191 (1974). *See also* the exhaustive opinion in *New Jersey Ed. Ass'n v. Burke*, 579 F.2d 764 (3d Cir.), *cert. denied*, 439 U.S. 894 (1978).

4. *Stone v. Powell*, 428 U.S. 465, 494 (1976).

5. 263 U.S. 413.

applicable to this case, federal district court jurisdiction has vested and the writ should issue.

II

THE *ROBINSON* AND *SOTOMURA* DECISIONS, ON APPEAL TO THE NINTH CIRCUIT, ARE PRECISELY APPOSITE TO THE DECISION PRESENTED FOR REVIEW AND ARE CITED EXAMPLES OF CONFLICT ON THE PART OF THE LOWER FEDERAL COURTS ON THE QUESTION PRESENTED BY THE PETITION

The petitioner has directed the Court to two federal district court decisions correctly applying *Hughes v Washington*, 389 U.S. 290, and *Mitchum v. Foster*, 407 U.S. 225, in asserting original jurisdiction of claims arising under Title 42 U.S.C. 1983 in situations strikingly analogous to the case at bar. Petition at 13. These two decisions are *Robinson v. Ariyoshi*, 441 F. Supp. 559 (D. Haw. 1977), and *Sotomura v. County of Hawaii*, 402 F. Supp. 95 (D. Haw. 1975).

Contrary to respondents' bare assertion that the facts in *Sotomura* and *Robinson* are distinguishable from the present case [Oppostion at 9], these two decisions, as will be shown, are so strikingly analogous to petitioner's case that petitioner is unable to point to contrary holdings on factually analogous situations even appoaching the factual circumstances in which petitioner finds herself. More importantly, however, the *Sotomura* and *Robinson* decisions represent the proper jurisdictional applications of Title 42 U.S.C. § 1983.

In *Sotomura v. County of Hawaii*, 402 F. Supp. 95, the Plaintiffs commenced an action in federal district court based upon a decision of the state supreme court which was so radical a departure from established state law that it constituted a taking of property by the state without just compensation. The

state supreme court had redefined a rule of property rights in a novel and unforeseeable manner and awarded the property in issue to the state with no justification from prior statutory or case law. Following that state court ruling, the *Sotomura* plaintiffs, as did petitioner herein [Petition at 6 n.2] filed timely petitions for rehearing followed by a timely certiorari petition to the United States Supreme Court, which were denied.

The plaintiffs then initiated a civil action in federal district court asserting that the state supreme court judgment and its implementation had deprived them of their property without just compensation or due process of law in violation, *inter alia*, of the United States Constitution and civil rights under Title 42 U.S.C. § 1983, the same legal claim which petitioner presented in the district court in this action. The *Sotomura* defendants moved to dismiss, asserting the same defenses and others which defendants raised in this case, all of which were rejected by that court, holding specifically that the claim presented by the plaintiffs, alleging a deprivation of constitutional rights based upon an unexpected and wholly unfounded change in state law by the state's highest court directly benefiting the state itself, sets forth a viable federal cause of action under Title 42 U.S.C. § 1983. 402 F. Supp. at 1 2-103, 105-106.

In the Court's decision on the merits, *Soto .ra v. County of Hawaii*, 460 F. Supp. 473 (D. Haw. 1978), the court reiterated that it had jurisdiction of the subject matter and that the state court decision was so radical a departure from prior law as to violate due process and to constitute a taking of property without compensation, in violation of the Fourteenth Amendment:

> The decision [of the state supreme court] was contrary to established practice, history and precedent and, apparently, was inteded to implement the court's conclusion that public policy favors extension of public use and ownership of the shoreline. A desire to promote public policy, however, does not constitute justification of a state taking private property

> without compensation. The Fourteenth Amendment to the Constitution forbids it. *Chicago, Burlington and Quincy Railroad Co. v. Chicago*, 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979 (1897); *Robinson v. Ariyoshi, supra.*

460 F. Supp. at 481.

The case of *Robinson v. Ariyoshi*, 441 F. Supp. 559, like the present action, arose out of a dispute over certain rights relating to real property with the state also claiming an interest in certain water rights. The state supreme court ruled in *Robinson* that the ownership of surface water rights was controlled by a completely different rule of law than that previously established with the result that the state became the owner of the riparian rights at issue. Following this ruling by the state supreme court, the *Robinson* plaintiffs brought an action in federal district court under Title 42 U.S.C. § 1983 alleging that the state court's action in issuing a new and unforeseeable ruling of law which substantially benefited the state, amounted to, among other things, a violation of plaintiffs' rights under the Fourteenth Amendment to the Constitution of the United States and Title 42 U.S.C. § 1983. Ruling upon the propriety of the state court action in this regard, the federal district court found the state's action to be a "shocking, violent deviation from the solidly-established case law—totally unexpected and impossible to be anticipated." *Id.* at 583. Implicitly assuming its jurisdiction throughout its discussion of the state court's violation of the federal guarantee of due process, the court in *Robinson* asserted its rationale for assuming jurisdiction based on the state court's refusal—amounting only to the opportunity of a petition for rehearing to entertain the federal claim—to allow the plaintiffs to argue the constitutional issues raised by the federal action.[6]

> [P]laintiff's claimed wrong in this federal action was not within any of the issues raised and tried by the [state court].

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6. 441 F.Supp. at 580, 583-586.

441 F. Supp. at 584 n.35.

While respondents have correctly asserted the absence of the added weight *Sotomura* and *Robinson* would gain from an affirmance of jurisdiction by an appellate court [Opposition at 9], it is worthy to note that jurisdictional issues in both cases are presently on appeal to the Court of Appeals for the Ninth Circuit *Sotomura v. County of Hawaii*, 402 F.Supp. 95 (D. Haw. 1975), 460 F. Supp. 473 (D. Haw. 1978), *appeals docketed*, 80-4488, 80-4498 (9th Cir. Oct. 2, 14, 1980), *Robinson v. Ariyoshi*, 441 F. Supp. 559 (D. Haw. 1975), *appeal docketed*, 78-2264 (9th Cir. June 12, 1978). Moreover, the *Sotomura*, *Robinson*, and, contrastingly, the district court's decision in this case [7] are clear examples of confusion on the part of the lower federal courts on the question presented, contrary to respondents' assertion. Opposition at 13. Indeed, the very existence of this confusion, the potential conflict between the circuit courts looming in the breast of the United States Court of Appeals for the Ninth Circuit, and the compelling policy considerations involved when the Court is presented with an opportunity to decide a question of the extent of federal jurisdiction overwhelmingly suggests issuance of the writ of certiorari. *See* Sup. Ct. R. 17.1 (a).

III

THE BARS RAISED BY RESPONDENTS ARE NOT JURISDICTIONAL AND RESOLUTION PROPERLY LIES WITH THE DISTRICT COURT

Respondents have alluded to "numerous other defenses sufficient to require judgment for the respondents," such as *res judicata*, sovereign immunity, and statute of limitations. Opposition at 14-15.

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7. *Reynolds v. State of Georgia*, 640 F.2d 707, 708-713 (5th Cir. 1981), Petition at 4a–12a.

1. Res Judicata is Not Operable in This Case.

Insofar as *Rooker*[8] is inapplicable here, so too is the doctrine of *res judicata*. *See* discussion at pages 1-2, *supra*. Nor can it be said that this Court's denial of Petitioner's request for direct review on petition of certiorari to the Supreme Court of Georgia [9] operates as *res judicata*, for this Court has rigorously insisted that such a denial carries with it no implication whatever regarding the Court's veiws on the merits of a case which it has declined to review. *Maryland v. Baltimore Radio Show, Inc.*, 338 U.S. 912, 919 (1950).

2. A State and its Officers May be Sued Under Title 42 U.S.C. § 1983.

Under the enforcement provisions of the Fourteenth Amendment, a state may be sued under Title 42 U.S.C. § 1983. *See Maher v. Gagne*, ____U.S. ____ 65 L.Ed.2d 653, 100 S.Ct. 2570 (1980); *Monell v. New York City Dept. of Soc. Serv.*, 436 U.S. 698 (1978); *U.S. Const.*, amend xiv, § 5. State officials are not sovereigns and may be sued in federal court. *Ex parte Young*, 209 U.S. 123 (1908); *Scheuer v. Rhodes*, 416 U.S. 232, 237-8 (1974).

A suit to make a government official take or keep his hands off private property is not in substance a suit against the sovereign. This was established in *United States v. Lee*, 106 U.S. 196 (1882). If trial on the merits shows the title is in the plaintiff, the court may grant relief, by ejectment or injunction. This means that "the question of jurisdiction is dependent on a decision of the merits." *Land v. Dollar*, 330 U.S. 731, 735 (1947).

While *Lee* and *Land* upheld suits against federal officials, the same rule has long been applied to suits against state officials. *Georgia R. Co. v. Redwine*, 342 U.S. 229 (1953); *Rindal v. Wesley*, 167 U.S. 204 (1897) (ejectment); *Allen v.*

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8. 261 U.S. 114 (1923); 263 U.S. 413 (1923).

9. *Reynolds v. State of Georgia et al.*, No. 76-1156 (February 27, 1977).

Baltimore & Ohio R. Co., 114 U.S. 311 (1885) (injunction).

Thus the decision as to jurisdiction on grounds of no sovereign immunity depends on decision on the merits. If Sapelo Island is the State of Georgia's, the court below had no jurisdiction. If the island is petitioner's, the court below had jurisdiction. In either event petitioner is entitled to a trial on the merits which, thus far, she has been deprived.

3. The Cause of Action is Not Barred by the Statute of Limitations.

The cause of action accrued at the rendering of the Supreme Court of Georgia's decision, and thus is not time-barred by the statute of limitations. In any event, the bar of the statute of limitations is properly a matter for the trial court and is not up for review here.

IV

CONCLUSION

For the reasons set forth above and in the Petition, Marianne O'Brien Reynolds submits that the Court should issue a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

JAMES A. GAMMON
1925 K. Street, N.W.
Suite 300
Washington, D.C. 20006
(202) 861-0770

Her Attorney

Of Counsel:

JAMES E. MEYERS
A. WREY FITCH III
Gammon & Grange
1925 K. Street, N.W.
Suite 300
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that I have served three true and correct copies of the foregoing "Petitioner's Reply Brief" upon behalf of the petitioner, Marianne O'Brien Reynolds, by first-class mail, postage paid, to each of the following counsel of record for all respondents:

Mrs. Patricia T. Barmeyer
Assistant Attorney General
132 State Judicial Building
40 Capitol Square, S.W.
Atlanta, Georgia 30334

Mr. Wallace E. Harrell
Bennet, Gilbert, Gilbert, Whittle,
Harrell & Gayner
Post Office Box 190
Brunswick, Georgia 31520

This 21st day of September, 1981.

/s/ James A. Gammon

JAMES A. GAMMON